



OECD Guidelines for Multinational Enterprises
National Contact Point Peer Reviews
BRAZIL



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Foreword

The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

Adhering governments to the Guidelines are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner. During the 2011 update of the Guidelines, NCPs agreed to reinforce their joint peer learning activities, in particular with respect to conducting voluntary peer reviews.

The peer reviews are led by representatives of 2 to 4 other NCPs who assess the NCP under review and provide recommendations. The reviews give NCPs a mapping of their strengths and accomplishments, while also identifying opportunities for improvement. More information can be found online at <https://mneguidelines.oecd.org/ncppeerreviews.htm>.

This report presents the peer review of the Brazilian National Contact Point (NCP) for Responsible Business Conduct. The peer review report was prepared by a peer review team made up of reviewers from the NCPs of Argentina, Germany and the United Kingdom, and with the support of the OECD Secretariat. The NCP of Argentina was represented by Alejandro Poffo and Gonzalo Jordan. The NCP of Germany was represented by Milena-Kristin Strathmann. The NCP of the United Kingdom was represented by Christabel Sadgrove. The OECD Centre for Responsible Business Conduct was represented by Nicolas Hachez and Maria Xernou. The report was informed by dialogue between the peer review team, the NCP of Brazil and relevant stakeholders during a virtual fact-finding mission on 14-17 March 2022. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review, the extensive supporting information provided, and successful efforts to ensure broad participation in the virtual visit. The NCP of Brazil was represented by Márcio Luiz de Freitas Naves de Lima, Hevellyn Albres, Mariana Albuquerque, Alessandra Mourão, Marcelo Bastos. This report also benefited from comments by institutional stakeholders (BIAC, OECD Watch, TUAC). It has been discussed by the Working Party on Responsible Business Conduct during its 24 October ad hoc meeting and declassified by the Investment Committee for publication.

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1. Key findings

Institutional Arrangements

The Brazilian NCP has an interagency structure. It is composed of three entities: the Working Group, the Secretariat and the Coordinator. At the time of the virtual visit, the Working Group is composed of ten public agencies with one representative each. A Decree established the NCP in June 2019.¹ Under the Decree, the Working Group takes decisions by vote based on simple majority. However, in practice, decisions are mainly taken by consensus. The Secretariat of the NCP is located in the Ministry of Economy. It is currently composed of four full-time members. The NCP Secretariat moved to the Ministry of Economy in 2019, from the Ministry of Finance. The NCP Coordinator is also located in the Ministry of Economy and works part-time on the NCP. The NCP does not have an advisory body. The Board of Foreign Trade and Investment of the Ministry of Economy, also known as CONINV, acts as the NCP's oversight body.

The interagency structure of the NCP adds value in terms of its visibility, as well as perception of impartiality. In addition, stakeholders noted that the NCP's interagency structure offers access to different areas of expertise, although these benefits of the inter-agency structure could be even further developed, in particular the relationship to CONINV. Stakeholders also agree on the NCP Secretariat's professionalism and reactivity, though some shared concerns related to the NCP's perception of impartiality in light of the Secretariat's location. The measures put in place by the NCP to guarantee its impartiality, including the applicable framework regarding conflict of interests and decision-making procedures, should be further developed and publicised.

In the absence of an advisory body, engagement with stakeholders should be strengthened to ensure visibility, accessibility, transparency, impartiality, as well as confidence.

¹ Following the virtual visit, a new Decree was issued. This peer review report assesses the functioning and operation of the NCP at the time of the virtual visit, *i.e.* under the Decree of June 2019.

	Findings	Recommendations
1.1	As the NCP does not include stakeholders in its structure, stakeholders have expressed a strong interest in closer and more formal engagement. The NCP is open to this idea and is considering options to engage on a regular basis with stakeholders.	The NCP should strengthen its engagement across stakeholder groups as a way to increase confidence, visibility, accessibility, transparency and its perception of impartiality. In doing so, the NCP could for example consider establishing an Advisory Body that includes stakeholder representatives.
1.2	Stakeholders recognise individual members of the NCP as knowledgeable, impartial and reactive. The NCP Secretariat's and Coordinator's location in the Ministry of Economy and the NCP's reporting line to CONINV offer opportunities for access to expertise and visibility. Some stakeholders however raise questions regarding perception of impartiality, in particular as the NCP's practice to make decisions by consensus is not reflected in its founding Decree or procedures. In practice, the NCP's relationship to CONINV also does not generally lead to meaningful substantive exchanges on RBC.	The NCP should better communicate about measures taken to foster its impartiality, such as the applicable framework regarding conflict of interests or the NCP's decision-making procedures, or its practice to decide by consensus. The NCP could take additional measures in this regard such as building a 'firewall' around the NCP Secretariat and the Working Group to avoid conflicts with other portfolios. The NCP's relationship with CONINV could also be revisited to ensure stronger access to expertise and visibility of the NCP across government as an authority on RBC.
1.3	The NCP Secretariat's human resources have increased during the past years, but achieving and maintaining sufficient levels of promotion in the face of a high caseload will remain a challenge over the long term. The NCP also underwent significant turnover in recent years, which has impacted its resources.	The human and financial resources of the NCP should be at least maintained at their current level, notably to ensure a sufficient level of promotion and visibility across the country. The NCP should also further strengthen its institutional memory through a handover strategy to minimise the impact of regular staff turnover.

Promotional activities

The Brazil NCP has significantly increased its promotional activities in recent years and has renovated its website. This has allowed the NCP to gain visibility, but its large national territory with a variety of populations poses challenges in this regard, and overall awareness of the existence and role of the NCP, and of the Guidelines and related Due Diligence Guidance, remain low in Brazil. Operating at central government level, the NCP should ensure visibility at three levels: central, federal district government and state level. The NCP recognises the need to strengthen its visibility across government and with stakeholders.

The Brazil NCP has adopted a promotional plan as part of its working plan for 2022. The plan notably refers to partnerships with the private sector and multi-stakeholder initiatives. The NCP has also developed and disseminated promotional material on the Guidelines and the NCP itself. In 2021, the NCP participated in 56 promotional events organised by others. Stakeholders recognised these efforts and noted the need to strengthen relations among all stakeholder groups and provide training and targeted information on RBC in practice.

On policy coherence, the NCP operates in a context whereby many government agencies have undertaken different policy initiatives on RBC. The NCP engages actively with other authorities through the Working Group and its location. The NCP also contributes to the elaboration of a National Action Plan on RBC (PACER). However, precise knowledge of the NCP and the Guidelines across government seems to be uneven. There are opportunities to further promote the NCP and RBC across government given interest from other government agencies for coordination.

	Finding	Recommendation
2.1	The NCP has made clear progress in increasing promotion, including through the adoption of annual promotional plans, participation in virtual events and renovation of its website. However, its visibility can be further strengthened. Stakeholders noted challenges in promotion related to the large national territory and notably asked for more information on the NCP, the specific instance process, and trainings on sectoral due diligence guidance.	The NCP should increase promotional activities to strengthen its visibility across the country and in all stakeholder groups. To that end, the NCP could conduct a country-wide stakeholder mapping and identify multiplier organisations with broad networks and geographic reach.
2.2	The NCP's role in promoting policy coherence was recently strengthened, including through its contribution to CAMEX's mandate to develop a National Action Plan on RBC (PACER). Although the NCP also operates in a context of growing activity on RBC by other governmental agencies, the NCP itself is not consistently involved despite sometimes the presence of the relevant agency in the Working Group.	In order to increase its contribution to policy coherence in Brazil, the NCP should make efforts to better leverage its interagency structure and the policy expertise developed in the context of the PACER. It should also raise more awareness of the Guidelines in key parts of government. The NCP could also offer its expertise in relevant policy development, where appropriate.

Specific instances

Since its establishment in 2003, and at the time of the virtual visit, the NCP had received 43 specific instances, which is one of the highest numbers in the entire NCP network and the highest in Latin America. Since 2011, the Brazilian NCP had received 28 cases, which is the fourth highest number in the entire NCP network and highest in Latin America.

In total, 27 specific instances have been concluded by the NCP, five of which were undergoing follow-up at the time of the virtual visit, 11 were not accepted, and five were ongoing. Among the concluded cases, one case led to an agreement facilitated by the NCP.

The Rules of Procedure of the NCP (RoP) are available on the NCP's webpage in both Portuguese and English. The NCP noted its plans to review its RoP in light of their complexity and some inconsistencies with the Procedural Guidance.

Stakeholders also called in this regard for more predictability and consistency in the specific instance procedure, and pointed to some issues regarding indicative timelines and communication with the parties in case of delays.

The NCP is viewed as a valuable remediation mechanism, especially in light of barriers to accessing judicial proceedings. Companies involved in concluded specific instances noted the added value of the specific instance process and recommendations for their due diligence practices.

To further build trust with potential submitters, the NCP is aware of the need to align with indicative timelines in practice and communicate with parties when delays occur. As a positive development, the NCP was engaging in follow-up in five specific instances at the time of the virtual visit.

	Findings	Recommendations
3.1	<p>The NCP has detailed and comprehensive Rules of Procedure. Some aspects are however very complex and there are some misalignments with the Procedural Guidance, notably on the admissibility criteria and confidentiality provisions. Their implementation in cases has sometimes resulted in practical difficulties and inconsistencies flagged by stakeholders and parties to specific instances. The NCP has noted its plans to review its Rules of Procedure.</p>	<p>When undertaking its review of the Rules of Procedure, the NCP should ensure that they are fully in line with the Procedural Guidance and could consider notably the following:</p> <ul style="list-style-type: none"> • less formal approach to the initial assessment phase; • lower admissibility criteria and threshold for acceptance of specific instances; • early notification of the concerned company; • consultation with the parties on published statements; • provision of the non-confidential version of information provided by one party to the other; • publication of statements in non-accepted specific instances; • clear definition of the Working Group, rapporteur, and NCP Secretariat roles; • reaching out proactively to the parties in the different stages of the process; and • following up consistently on recommendations and agreements.
3.2	<p>Cases handled by the NCP have regularly exceeded indicative timelines, notably as a result of a high case load, complexity of issues, but also of difficulties communicating with parties. Stakeholders have highlighted the need to communicate proactively about timelines to ensure predictability of the process and strengthen parties' trust.</p>	<p>In order to further build trust among potential submitters and increase the predictability of the specific instance process, the NCP should strive to meet indicative timelines when possible and proactively communicate with parties when timelines cannot be met.</p>

2. Introduction

The Brazilian NCP at a glance

Established: 2003.

Structure: Inter-ministerial with a secretariat located in the Ministry of Economy and no stakeholder advisory body.

Location: Ministry of Economy.

Staffing: four full-time and one part-time staff.

Webpage: <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn> [Portuguese]; <https://www.gov-br.translate.goog/produtividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn? x tr sl=pt& x tr tl=en& x tr hl=pt-BR& x tr pto=nui,sc> [English]; <https://www.gov-br.translate.goog/produtividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn? x tr sl=pt& x tr tl=es& x tr hl=pt-BR& x tr pto=nui,sc> [Spanish]

Specific instances received at the time of the virtual visit: 38 concluded and 5 ongoing

The implementation procedures of the Guidelines require NCPs to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. In addition, the guiding principles for specific instances recommend that NCPs deal with specific instances in a manner that is impartial, predictable, equitable and compatible with the Guidelines. This report assesses conformity of the Brazilian NCP with the core criteria and with the Procedural Guidance contained in the implementation procedures.

Brazil adhered to the OECD Declaration on International Investment and Multinational Enterprises (Investment Declaration) in 1997. The OECD Guidelines for Multinational Enterprises (the Guidelines) are part of the Investment Declaration. The Guidelines are recommendations on responsible business conduct (RBC) addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines have been updated five times since 1976; the most recent revision took place in 2011.

Countries that adhere to the Investment Declaration are required to establish National Contact Points (NCPs). NCPs are set up to further the effectiveness of the Guidelines and adhering countries are required to make human and financial resources available to their NCPs so they can effectively fulfil their responsibilities, taking into account internal budget priorities and practices.²

NCPs are “agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.”³

The Procedural Guidance covers the role and functions of NCPs in four parts: institutional arrangements, information and promotion, implementation in specific instances and reporting. In 2011, the Procedural

² Amendment of the Decision of the Council on the OECD Guidelines for Multinational Enterprises, para I(4).

³ OECD Guidelines for Multinational Enterprises (2011), Foreword.

Guidance was strengthened. In particular, a new provision was added to invite the OECD Investment Committee to facilitate voluntary peer evaluations. In the commentary to the Procedural Guidance, NCPs are encouraged to engage in such evaluations.

The objectives of peer reviews as set out in the “Revised core template for voluntary peer reviews of NCPs”⁴ are to assess that the NCP is functioning and operating in accordance with the core criteria set out in the implementation procedures; to identify the NCP’s strengths and possibilities for improvement; to make recommendations for improvement; and to serve as a learning tool for all NCPs involved.

This report was prepared based on information provided by the NCP and in particular, its responses to the NCP questionnaire set out in the revised core template⁵ as well as responses to requests for additional information. The report also draws on responses to the stakeholder questionnaire which was completed by 12 organisations representing government agencies, enterprises, trade unions, civil society and academic institutions (see Annex A for a complete list of stakeholders who submitted written feedback) and information provided during the virtual visit.

Brazil recently underwent its RBC Policy Review OECD Responsible Business Conduct in the framework of the regional project on Responsible Business Conduct in Latin America and the Caribbean.⁶ The Policy Review report includes a section dedicated to the NCP.⁷

The peer review of the NCP was conducted by a peer review team made up of reviewers from the NCPs of Argentina, Germany and the United Kingdom, along with representatives of the OECD Secretariat. Due to Covid-19 related restrictions, a virtual fact-finding mission took place on 14-17 March 2022 and included interviews with the NCP, other relevant government representatives and stakeholders. A list of organisations that participated in the virtual visit is set out in Annex B. The peer review team wishes to acknowledge the NCP for the quality of the preparation of the peer review, the extensive supporting information provided, and successful efforts to ensure broad participation in the virtual visit.

The basis for this peer review is the 2011 version of the Guidelines. The specific instances considered during the peer review date back to 2003. The methodology for the peer review is that set out in the core template.⁸

Economic context

Brazil’s economy is dominated by the service sector, representing 73% of GDP. Regarding foreign direct investment (FDI), the inward stock of FDI, which represents the accumulated value of FDI in the Brazilian economy over time, was USD 593 billion in 2021, equivalent to 36 percent of Brazil’s GDP. The outward stock of FDI was USD 296 billion in 2021, representing 18 percent of Brazil’s GDP. In 2021, Brazil’s exports of goods were USD 284 billion and exports of services were USD 33 billion while imports of goods were USD 248 billion and imports of services were USD 50 billion.

The main investors in Brazil are the United States, the Netherlands, Spain, France and Switzerland. The main inward investment sectors are manufacturing, followed by finance, insurance activities and mining and quarrying. The main destinations for outward investment from Brazil are the British Virgin Islands, the Netherlands, the United Kingdom, Norway and Finland, while the most important sectors are finance and insurance activities followed by mining and quarrying.

⁴ OECD, Revised Core Template For Voluntary Peer Reviews Of National Contact Points (2019), <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

⁵ *Ibid.*

⁶ [Promoting Responsible Business Conduct in Latin America and the Caribbean.](#)

⁷ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#)

⁸ OECD (2019), Revised Core Template For Voluntary Peer Reviews Of National Contact Points, <https://mneguidelines.oecd.org/national-contact-point-peer-reviews-core-template.pdf>

3. Institutional arrangements

Under the Procedural Guidance of the Guidelines, Section I (A): “Since governments are according flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent and accountable manner.”

Legal basis

Brazil adhered to the OECD Investment Declaration in 1997. The Brazilian NCP was formally established in 2003.

The NCP was established by Decree 9 874/2019 (the Decree).⁹ The Decree outlines the NCP’s structure, functions and operations. During the peer review, the NCP noted its plans to propose a revision of the Decree to reflect new developments since its adoption.¹⁰ Internal Regulation (‘Portaria’) 8 738/2021 further describes the functioning of the NCP and further defines the public bodies composing its current membership.¹¹ Two Internal Regulations designate the current individual representatives of the NCP Working Group members.¹²

NCP Structure

The NCP is an interagency NCP composed of a Working Group (also known as IWG-NCP) with representatives of ten public agencies (at the time of the virtual visit). The NCP does not have an advisory body. The National Committee on Investment of the Board of Foreign Trade and Investment of the Ministry of Economy, also known as CONINV, acts as the NCP’s oversight body. The Secretariat of the NCP is located in the Ministry of Economy.

Composition

The NCP is composed of three entities: the Working Group, the Secretariat and the Coordinator.

⁹ [Decree No. 9.874, of 27 June 2019.](#)

¹⁰ Following the virtual visit, Decree No. 11.105 of 27 June 2022 was issued. According to the NCP, Decree No. 11.105 notably introduced (i) two new members with one representative each to the NCP Working Group: the Ministry of Agriculture, Livestock and Food Supply and the Attorney General’s Office; (ii) a new nomination process for individual representatives of NCP Working Group members through official letter by the respective member to the NCP Coordinator; and (iii) changes on the frequency of reporting to CONINV from a semester to a yearly basis. This peer review report assesses the functioning and operation of the NCP at the time of the virtual visit, *i.e.* under Decree 9.874 of 27 June 2019.

¹¹ The link to the Internal Regulation (‘Portaria’) 8 738/2021 on the NCP’s website is currently not functional.

¹² Internal Regulations 11 089/2021 most recently designated the Ministry of Mines and Energy and the Central Bank of Brazil; Internal Regulation 4 070/2021 designated the other members. The representatives of Working Group members changed in April and September 2021.

The Working Group: the Brazilian NCP is structured as an inter-ministerial Working Group. The Working Group is composed of ten public agencies at the time of the virtual visit.¹³ Each agency counts one representative on the Working Group (Article 3 of the Decree):

- two entities within the Ministry of Economy (MoE):
- the Special Secretariat for Foreign Trade and International Affairs (Secint);
- the Special Secretariat for Productivity, Employment and Competitiveness (Sepec);
- the Ministry of Labour and Social Security (MTP);
- the Ministry of Foreign Affairs (MRE);
- the Ministry of Environment (MMA);
- the Ministry of Justice and Public Security (MJSP/CADE);
- the Ministry of Women, Family and Human Rights (MMFDH);
- the Ministry of Mines and Energy (MME);
- the Central Bank of Brazil (BCB); and
- the Office of the Comptroller General of Brazil (CGU).

The NCP Secretariat moved to the Ministry of Economy in 2019, from the Ministry of Finance. The Decree reorganised the NCP as part of the newly created Ministry of Economy, resulting from the merger of the ministries of Planning, Finance, Industry and Labour in early 2019.¹⁴ Following its reinstatement in July 2021,¹⁵ the Ministry of Labour and Social Security replaced the Special Secretariat for Social Security and Labour, which was one of the three members of the NCP from the Ministry of Economy under the Decree. The NCP Secretariat is currently located in the Special Secretariat for Foreign Trade and International Affairs (Secint), under the Executive Secretariat of the Foreign Trade Chamber (SE-CAMEX), Undersecretariat of Foreign Investment (Sinve) (see Figure 3.1). The Foreign Trade Chamber (Câmara de Comércio Exterior, CAMEX) is the lead government entity in charge of formulating, adopting and implementing policies and initiatives related to trade and investment in Brazil. Its Council of Ministers – the Trade/Commercial Strategy Council (Conselho de Estratégia Comercial), which is chaired by the President of the Republic, is the lead deliberative and policymaking entity in the field.¹⁶ The NCP indicates that the NCP's reform in 2019 contributed to its visibility (see below).

The NCP Secretariat is currently composed of four full-time members. Stakeholders agree that the NCP Secretariat staff is knowledgeable, impartial and reactive. They have also noticed increased professionalisation of its work and engagement in the past years.

The NCP Coordinator is the Undersecretary for Foreign Investment in the Ministry of Economy in SE-CAMEX and works part-time on the NCP. Other duties of the position include coordinating the Direct Investments Ombudsman activities and providing secretariat support to the National Committee on Investment (CONINV). CONINV is also the NCP's oversight body (see section on Reporting below).

The level of representation within the NCP is middle to senior and the members' designation process is formally established. At the time of the virtual visit, the representatives of the Working Group members were proposed by the respective heads of these agencies and designated by the Special Secretariat for Foreign Trade and International Affairs of the Ministry of Economy through publication of an Internal

¹³ As noted above, Decree No. 11.105 of 27 June 2022 introduced two new members with one representative each to the NCP Working Group: the Ministry of Agriculture, Livestock and Food Supply and the Attorney General's Office.

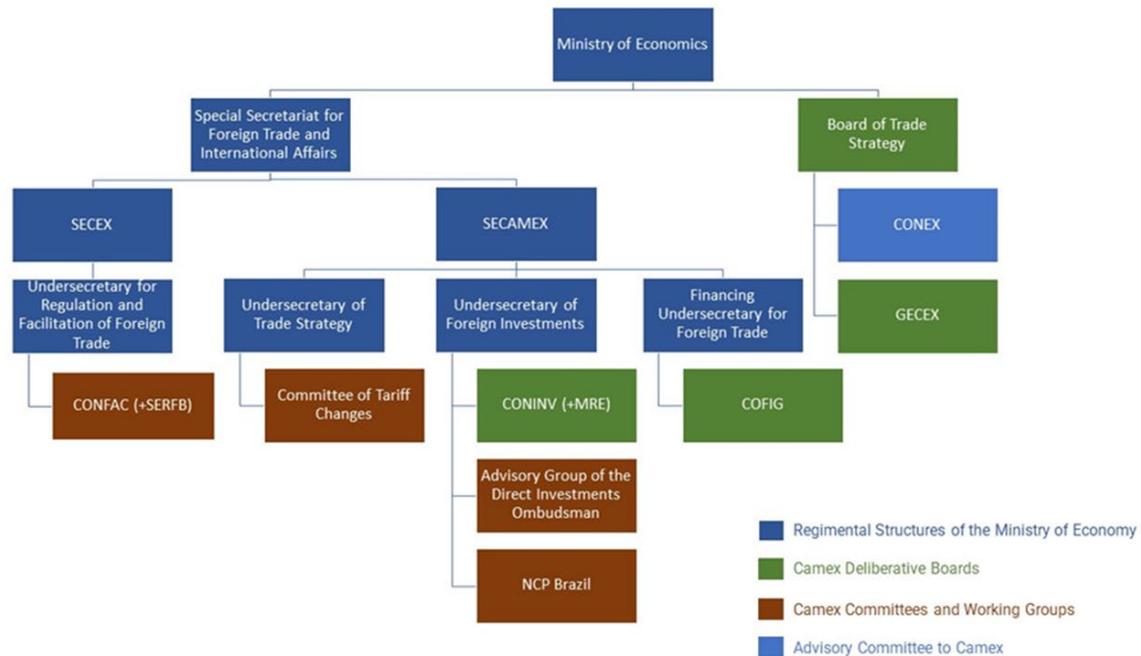
¹⁴ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#)

¹⁵ Provisional measure 1 058 published on 28 July 2021.

¹⁶ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#), para. 298.

Regulation (Article 3 of the Decree; Article 2 paras. 1-2 of Internal Regulation 8 738/2021).¹⁷ Although there is no rotation system for Working Group members, there is turnover in practice. The most experienced members have been appointed less than two years prior to the on-site visit.

Figure 3.1. Location of the NCP Secretariat



Source: Brazilian NCP (2022)

Functions and operations

The Decree outlines the missions of the NCP (Article 2).

At the time of the virtual visit, the missions and duties of the Working Group were further defined as follows in Internal Regulation 8 738/2021:¹⁸

- to act as a governance and steering entity for the promotion and implementation of the Guidelines;
- to raise awareness of and encourage multinational enterprises to implement the Guidelines;
- to assist in the concrete application of the Guidelines by multinational enterprises;
- to analyse allegations of non-observance of the Guidelines by multinational enterprises and issue opinions regarding acceptance or not of the allegations, it being understood that:
- in case the allegation is accepted, the NCP will designate reporters based, when possible, on thematic expertise;

¹⁷ As noted above, Decree No. 11.105 of 27 June 2022 introduced a new nomination process for individual representatives of NCP Working Group members through official letter by the respective member to the NCP Coordinator.

¹⁸ Decree No. 11.105 of 27 June 2022 updated the missions and duties of the NCP. The NCP plans to update Internal Regulation 8 738/2021 accordingly.

- it will offer mediation to find a non-judicial solution between parties;
- to cooperate with other NCPs;
- to follow discussions at the OECD on the implementation of the Guidelines and possible additional negotiations, and approve instruments accepted by Brazil.

The missions and duties of the Secretariat were also established by Internal Regulation 8 738/2021 (Chapter V), including, but not limited to, providing direct support to the Coordinator, administrative support to the Working Group meetings, keeping archives, liaising with Working Group members and other public and private entities for the performance of the NCP's activities and evaluating compliance with the admissibility requirements for submitted specific instances.

At the time of the virtual visit, the missions and duties of the Coordinator were set by the Decree (Article 4) as follows: (i) calling and chairing meetings, (ii) responding to requests for information on the Guidelines, (iii) coordinating and, when necessary, acting as mediator in meetings with persons involved in allegations of non-observance of the Guidelines, (iv) representing the NCP in promotional activities and in dialogue with national and international entities with relevant missions, (v) submitting decisions for approval by the NCP as appropriate, (vi) providing information as requested by the CONINV (see section on Reporting below).¹⁹

The Decree provides details on the NCP's meeting and decision-making processes. Ordinary meetings of the NCP take place twice per semester, and extraordinary meetings can be requested by members (Article 5). The NCP makes decisions by vote of the Working Group. The meeting quorum is half of the members, and the voting majority is half of the members participating in meetings, with the Coordinator having a casting vote in case of a tied vote (Article 5). In practice, decisions are mainly taken by consensus. Consultations may also be conducted by email exchange.

The NCP reports that the interagency structure adds value in terms of visibility and access to expertise. Overall, the NCP indicates that the reforms made it better connected to the rest of government. Visibility within the Brazilian government and with different groups of stakeholders can be achieved through the network of the Working Group members. The NCP reports that links are notably established with trade unions through the Ministry of Labour and Social Security, business organisations through the Ministry of Economy, and civil society organisations (CSOs) through the MMFDH. Members also ensure access to expertise in their fields (e.g. human rights, labour rights, environment, anti-corruption). The Ministry of Labour and Social Security contributes with expertise in mediation. Stakeholders highlighted that the NCP's interagency structure allows it to take into consideration different perspectives and strengthen its visibility within government. One stakeholder noted the strategic importance of placing the NCP within the Ministry of Economy.

In terms of access to expertise, the NCP has also established links with other governmental entities. To help with the thematic diversity of the Guidelines and to enhance the effectiveness of its activities, the Decree (Article 6) provides that the NCP may make specific requests to five organs.²⁰ The NCP reports recent consultations with the first three organs.

In practice, the NCP also consults other organs on a needs basis. The NCP notably reports recently reaching out to the Securities and Exchange Commission of Brazil, two Secretariats under the Ministry of Economy on state-owned enterprises and public procurement-related issues, and the Ministry of Agriculture, Livestock and Food Supply. Stakeholders highlighted opportunities for engagement with other public authorities and federal agencies active in RBC-related matters, including local government, regional

¹⁹ This provision is not included in Decree No. 11.105 of 27 June 2022. The NCP plans to outline the missions and duties of the NCP Coordinator in an updated Internal Regulation.

²⁰ This provision is not included in Decree No. 11.105 of 27 June 2022. Under the new Decree, the NCP may consult with any public or private organisation.

labour offices, Chambers of Commerce, the National Indian Foundation on indigenous peoples' issues (FUNAI), the National Institute of Colonisation and Agrarian Reform (INCRA), the Palmares Foundation, and the National Committee of Prevention and Fight against Torture (CNPCT). Specifically, the NCP reported recently reaching out proactively to INCRA regarding a concluded specific instance.²¹

The NCP also reports measures to ensure transparency of its operations in light of its structure. In particular, the NCP notes that transparency is ensured through (i) the discussion and approval of the NCP decisions by the Working Group, including the ones related to specific instances, (ii) regular updates to its webpage, including reports to the OECD and CONINV and the NCP's operations, (iii) social media presence and responses to enquiries by e-mail (iv) publication of minutes of the NCP Working Group meetings on the webpage.²² The NCP further reports that federal law provisions concerning access to information apply to its documents.²³ Stakeholders recognised the NCP's efforts to increase its transparency. One stakeholder noted that the NCP has noticeably improved its webpage and communications in recent years. However, stakeholders also asked for more information on decision-making rules and the respective roles of the NCP entities, *i.e.* the Working Group, the Secretariat and the Coordinator.

Stakeholders consider the individual members of the NCP as knowledgeable, impartial and reactive. However, some stakeholders have raised concerns with regard to potential conflicts of interest as a result of the Secretariat's and the Coordinator's location. The Ministry of Economy's Executive Secretariat of the Ministerial Board of Foreign Trade and Investment (SE-CAMEX) focuses on policies and activities related to foreign trade, attracting direct foreign investments, Brazilian investments abroad and financing exports.²⁴ From this point of view, the concern is that while the NCP's location in the Ministry of Economy presents an opportunity to build leverage and gain traction with business, this proximity with business may affect its impartiality to other stakeholders. Indicatively, the NCP reports regular cooperation with business organisations in promotional activities (see Annex C Promotional events below), but less for other stakeholder groups. The lack of institutional engagement with stakeholders, such as an advisory body, may also raise concerns on the NCP's impartiality. Despite the NCP's structure as an inter-agency body, stakeholders perceive it in practice as part of the Ministry of Economy. Likewise, there is a demand for more clarity on guarantees of impartiality of the Working Group members and decision-making rules.

The NCP reports measures in place to guarantee its impartiality. In terms of prevention of conflicts of interest at individual level, the NCP reported that, apart from the Coordinator, the four full time staff only work on NCP matters. They hence do not deal with export or other business promotion policies. The NCP reports that all NCP members, including the Secretariat and the Working Group, are public servants and covered by the Brazilian conflict of interest law and related regulations.²⁵

Stakeholders also agree on the need to clarify the role of the rapporteur in the specific instance process. In the initial assessment phase, the NCP Coordinator designates a rapporteur, preferably the representative of the in Working Group member competent for the issues question (Sections 5.5 – 5.6 of the Rules of Procedure; see also Chapter on Specific Instances below). This practice can raise impartiality concerns in cases involving companies that closely engage with the agency of the rapporteur. The NCP notes that the Working Group functions as a safeguard of impartiality by taking the final decision on the rapporteur's recommendations.

²¹ Specific instance 06/2020.

²² Brazil NCP, [Extratos de atas](#).

²³ http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm; http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm; See also section below on Confidentiality (Chapter 6 Specific Instances).

²⁴ About CAMEX, <https://www.gov.br/produtividade-e-comercio-externo/pt-br/assuntos/CAMEX/sobre-a-CAMEX/sobre-a-CAMEX>

²⁵ http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12813.htm

In light of requests, it may be useful for the NCP to strengthen and better publicise the safeguards that are in place to maintain impartiality of the NCP and the continuity of its work. This could for example include building a ‘firewall’²⁶ around the NCP Secretariat and the Working Group to avoid conflicts with other portfolios. Other potential measures include disseminating information on the NCP as such beyond its location in the Ministry of Economy, making publicly available the conflict of interest policy in an official NCP document, and specifying guarantees of impartiality of the rapporteur and Working Group members in the specific instance process.

In light of the absence of stakeholder participation in the NCP’s structure, some stakeholders have called for increased engagement as a means to increase visibility, accessibility, and perception of impartiality. One trade union representative notably notes that the NCP lacks clear institutional arrangements to develop and maintain trade union relations.²⁷ The stakeholder further notes that although the NCP has received the second-most trade union specific instances within the NCP network, it remains the only NCP with ten or more trade union cases without trade union representation in its structure. One CSO representative notes that the lack of stakeholder involvement in the NCP, and in particular the lack of an advisory body, affects stakeholder trust. Stakeholders overall agreed that efforts to ensure trust need to go beyond the interagency structure of the NCP and have made a range of suggestions in this regard, from regular and formalised exchanges to inclusion in the NCP’s structure, e.g. through an advisory body.

In light of the above, the NCP recognises the benefits of further engaging with stakeholder groups. The NCP reports that it intends to re-establish annual stakeholder meetings and indicated during the virtual visit being open for considering inclusion of stakeholders. The NCP seeks feedback on its activities through meetings and promotional activities with external stakeholders.

Resources

The NCP’s staff increased significantly in the past few years. Stakeholders welcomed this positive development. The NCP is one of the best resourced NCPs in terms of staff in the NCP network. With four full time and one senior part time staff members, as at present, this is a significant increase in human resources compared to previous years: the NCP only had three full time officials and one part time official in 2019, one full time official in 2018, and one full time and two part time officials in 2017. The NCP notes that since the location of the NCP was moved to SE-CAMEX in 2019, the Secretariat is better staffed, allowing for better performance under its mandate. The NCP is also currently employing external consultants on ongoing activities (e.g. development of the PACER below, review of Rules of Procedure).

Despite the increase of human resources, the NCP reported that its needs continue to grow. The NCP identified three main challenges in this regard: (i) handling specific instances in a timely manner (see also Chapter 6 on Specific Instances below); (ii) increasing promotion to make the NCP more visible, considering the size and complexities of RBC topics in Brazil; and (iii) fulfilling growing demands, especially concerning policy coherence and the relationship with the OECD. In its 2021 annual report to the OECD, the NCP noted that human and financial resources did not allow the NCP to handle specific instances in an efficient and timely manner, organise promotional events or cover professional mediator fees. Supporting the development of the PACER (see below) may also place a significant strain on the resources of the NCP. In its 2020 annual report to the OECD, the NCP reported heavy workload with many specific instances, the Responsible Business Conduct in Latin America and the Caribbean Project, and the RBC Policy Review.

The NCP has faced significant turnover in recent years. In its 2019 annual report to the OECD, the NCP listed turnover as the main challenge in its work. The NCP has had three different Coordinators between 2019 and 2020. Two NCP full-time staff members left the NCP in 2021. The composition of the Working

²⁶ For further details, see OECD (2022) [Guide for National Contact Points on Building and Maintaining Impartiality](#).

²⁷ TUAC Briefing #2: Implementing the OECD Guidelines Part II for Constructive NCP-Trade Union Relations.

Group was affected in 2019 as a result of the reform of the governmental structure. The latest legal instruments issued in 2021 also reflect turnover in the representatives of the bodies composing the Working Group.

The NCP reports trying to ensure strong mechanisms for institutional memory and continuity of the work and minimise the impacts of turnover. It registers all the work in cloud-based electronic files, and makes use of digital tools to file correspondence. Its website, where notably all specific instances are listed, also plays a role in this regard. The NCP reports ongoing efforts to provide fast trainings for newcomers since 2020 and informal videos available for staff on its operations.

The NCP does not have a dedicated budget. Its functioning is covered by the Executive Secretariat of the Board of Foreign Trade and Investment. Financial resources are provided *ad hoc* for promotional activities. This was the case notably in 2021. For 2023, the NCP aims to propose the establishment of a dedicated budget. In order for the NCP to effectively fulfil its mandate and notably to expand its visibility (see Chapter on Promotion of the Guidelines below), maintaining resources at their current level or even increasing them will be key, especially given the heavy case load facing the NCP.

Reporting

The NCP reports to the OECD and makes its reports publicly available. The Brazilian NCP submits its annual report to the Investment Committee regularly during the past few years. These reports are published on the NCP's webpage since 2013. The NCP does not report to Parliament.

The NCP also reports at domestic level within the Ministry of Economy since 2019. The National Committee on Investment of the Board of Foreign Trade and Investment of the Ministry of Economy, also known as CONINV,²⁸ acts as the NCP's oversight body (Article 7 of the Decree). CONINV, part of CAMEX, is an inter-ministerial committee composed of eight agencies.²⁹ The Special Secretary for Foreign Trade and International Affairs and the NCP Coordinator as Undersecretary for Foreign Investment in the Ministry of Economy coordinate its activities at Vice-Minister and technical level respectively (Articles 3,6 of the Decree). CONINV's activities focus on areas of foreign investments based on input from several agencies (Article 2). Among other duties, CONINV is in charge of elaborating policy proposals for attraction and promotion of FDI. Besides the NCP's supervision, CONINV monitors the activities of the Advisory Group of the Direct Investments Ombudsman.

The NCP reports to CONINV twice a year and informs it about any other relevant developments anytime.³⁰ Reports are available on the NCP's webpage.³¹ The reports provide a general overview of the main tasks of the NCP, promotional activities, developments on specific instances and hyperlinks to the relevant information on the webpage, activities in relation to policy coherence and cooperation with the OECD. On specific instances, the NCP shares draft final statements with CONINV. In practice, specific instances are not discussed by CONINV.

Although the NCP's relationship with CONINV offers opportunities for high-level visibility and expertise, in practice CONINV's input and contribution to the NCP's work seems limited. The level of awareness in CONINV on the NCP's work seems to be low. Illustratively, CONINV members reported that there was generally no debate on the NCP's reports, and no feedback given. Likewise, engagement in promotional activities organised by the NCP was limited.

²⁸ [National Committee on Investment – CONINV: Description](#).

²⁹ Article 3, [Decree 9 885/ 2019](#).

³⁰ As noted above, under Decree No. 11.105 of 27 June 2022 the NCP reports to CONINV on a yearly basis.

³¹ [Relatórios PCN - Coninv](#)

	Findings	Recommendations
1.1	As the NCP does not include stakeholders in its structure, stakeholders have expressed a strong interest in closer and more formal engagement. The NCP is open to this idea and is considering options to engage on a regular basis with stakeholders.	The NCP should strengthen its engagement across stakeholder groups as a way to increase confidence, visibility, accessibility, transparency and its perception of impartiality. In doing so, the NCP could for example consider establishing an Advisory Body that includes stakeholder representatives.
1.2	Stakeholders recognise individual members of the NCP as knowledgeable, impartial and reactive. The NCP Secretariat's and Coordinator's location in the Ministry of Economy and the NCP's reporting line to CONINV offer opportunities for access to expertise and visibility. Some stakeholders however raise questions with some stakeholders regarding perception of impartiality, in particular as the NCP's practice to make decisions by consensus is not reflected in its founding Decree or procedures. In practice, the NCP's relationship to CONINV also does not generally lead to meaningful substantive exchanges on RBC.	The NCP should better communicate about measures taken to foster its impartiality, such as the applicable framework regarding conflict of interests or the NCP's decision-making procedures, or its practice to decide by consensus. The NCP could take additional measures in this regard such as building a 'firewall' around the NCP Secretariat and the Working Group to avoid conflicts with other portfolios. The NCP's relationship with CONINV could also be revisited to ensure stronger access to expertise and visibility of the NCP across government as an authority on RBC.
1.3	The NCP Secretariat's human resources have increased during the past years, but achieving and maintaining sufficient levels of promotion in the face of a high caseload will remain a challenge over the long term. The NCP also underwent significant turnover in recent years, which has impacted its resources.	The human and financial resources of the NCP should be at least maintained at their current level, notably to ensure a sufficient level of promotion and visibility across the country. The NCP should also further strengthen its institutional memory through a handover strategy to minimise the impact of regular staff turnover.

4. Promotion of the Guidelines

Promotional plan

In its 2017-2021 annual reports to the OECD, the NCP reported having adopted a promotional plan for the following year. The promotional plans of the NCP are part of its wider working plans. In its 2021 annual report, the NCP reports that its promotional plan is available on its webpage. The webpage provides an overview of activities for 2020-2022.³² For 2022, the promotional plan notes the role of the NCP in the promotion of the OECD Due Diligence Guidance and stakeholders' engagement. The working plan for 2022 notably refers to partnerships with the private sector and multi-stakeholder initiatives.³³

Despite the NCP's adoption of annual promotional plans and strong promotional activities (see below), the NCP recognises the need for more efforts to ensure visibility both across government and with stakeholders. The NCP notes facing a trade-off between raising its visibility at national level and dealing with a heavy workload of specific instances. The NCP further reports that it recently monitored the actual awareness of the Guidelines and related Due Diligence Guidance by enterprises in Brazil. The relevant survey was conducted in the context of the National Action Plan on RBC (PACER) in 2021 (see below). The NCP intends to continue conducting the survey. Based on data for 2021, only 28% of 101 respondents declared knowing the NCP. Moreover, only 27% of Brazilian respondents to the OECD 2020 Responsible Business Conduct Survey in LAC³⁴ reported having knowledge of the NCP, and rated 3.1 out of 10 their experience of dealing with the NCP. All stakeholder groups considered that the Guidelines and the NCP were little known among small and medium-sized enterprises (SMEs). Stakeholders strongly agreed on the need to raise visibility of the NCP and strengthen the promotion of the NCP and the Guidelines. They noted that awareness of the Guidelines is low beyond the NCP's network, including among major companies.

The NCP's promotional efforts face three types of challenges. First, the NCP operates in a large territory, with a variety of populations. Second, the NCP should ensure visibility at various levels of government: central, federal district government and state level. Third, in its 2020 annual report to the OECD, the NCP noted that promotion was particularly challenging due to the pandemic, turnover in the NCP staff, and its high workload.

To address these challenges, the NCP's promotional plan could set specific goals and be underpinned by a stakeholder mapping. A promotional strategy could also include the objectives of outreach activities, how to measure their impact and taking into account how they align with other policy goals or activities. Additionally, collaboration with 'multiplier' organisations can increase the visibility of the NCP across the national territory without requiring significant additional resources. For example, the NCP could further explore contribution of local government branches or stakeholder organisations active beyond the capital, as well as business organisations with affiliated members at both federal district and state level. The NCP

³²<https://www.gov.br/produtividade-e-comercio-externo/pt-br/assuntos/CAMEX/pcn/produtos/promocao/promocao-diretrizes-ocde>

³³ Brazil NCP, [Plano de Trabalho 2022](#), p. 4.

³⁴ OECD (2021) [Business Survey Results on Responsible Business Conduct in Latin America and the Caribbean](#).

could further leverage existing networks of its Working Group members for promotional purposes. For example, the MMFDH has a strong network of CSOs active in labour and human rights issues and connections at state level. There are also opportunities for more promotion with Brazilian companies operating abroad through embassies and diplomatic staff posted abroad.

Information and promotional materials

In the past few years, the NCP has developed and disseminated promotional material on the Guidelines and the NCP itself. The NCP disseminates in particular three brochures in Portuguese:

- an online brochure on the Guidelines: the brochure provides an overview of the Chapters of the Guidelines, their legal nature and the relevance of the Guidelines for corporate operations.³⁵ It also covers potential submitter groups, coordination of NCPs and the three phases of the specific instance process (initial assessment, conciliation and/or mediation, final statement). The brochure includes the contact details of the Brazilian NCP and describes the NCP's mandate to promote the Guidelines and handle specific instances;
- a joint publication with the National Industry Confederation (CNI)³⁶ for the private sector: the publication³⁷ provides an overview of the Guidelines, adherent countries, related instruments, including sectoral due diligence guidance, and the relevance of the standards for companies. It further presents the Brazilian NCP and its structure;
- a brochure by CAMEX on the NCP: the one-pager presents the mandate of the NCP in promoting the Guidelines, providing access to remedy and fostering policy coherence for RBC.³⁸

In 2019, the NCP also produced a video clip to present and promote the Guidelines and the NCP, available on its webpage and on YouTube.³⁹ The video is in Portuguese, with English subtitles. In February 2022, the video had been viewed approximately 2 000 times. Stakeholders welcomed the variety of communication, information and promotional materials and channels used by the NCP. CSO and business representatives suggested additional specific materials that could be useful for dissemination. They include a short document with an overview and key lessons from specific instances, short educational material for companies on the Guidelines and information on the relation and interaction of the NCP with other institutions competent on business and human rights issues.

Promotional events

The NCP organised a fixed number of promotional events in the past few years (see Annex C Promotional Events). The events organised or participated to by the NCP in the last three years have tended to target government officials or mixed audiences, and address general topics such as presentations of the Guidelines and of the NCP itself. In 2021, the NCP organised two events. The NCP co-organised the MERCOSUR-OECD Investment Webinar in November 2021. The webinar covered issues related to the general topics of the Guidelines and policy coherence. Approximately 100 participants attended, representing several audiences. During the following month, the NCP co-organised an online session under the Euroconsumers Forum on “Responsible Business Conduct and the OECD Guidelines: Trends

³⁵ Brazilian NCP, [O que são as Diretrizes da OCDE?](#)

³⁶The CNI was established in 1938 and operates as an organisation representing interests of the Brazilian industry. It represents 27 industrial federations and approximately 1 300 trade unions; CNI, [About CNI](#).

³⁷CNI, [Diretrizes da OCDE para empresas Multinacionais](#).

³⁸Pilulas do Conhecimento – [Colegiados da CAMEX, O que e PCN?](#)

³⁹Available at <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/pcn> .

and Opportunities". The session covered the Guidelines, NCPs and consumers' rights.⁴⁰ In 2020 and 2019, the NCP organised two events in total. In 2019, the Undersecretariat of Foreign Investment in partnership with the World Bank organised a series of eight large promotional 'roadshows' across the country in which the NCP mechanism was also promoted. These events gathered a large and diverse audience. They mainly focused on introducing the Guidelines and the NCP. During the past few years, the NCP did not organise trainings for businesses. Stakeholders recognise the NCP's efforts in outreach and promotional activities. Some suggested further ideas which could help raise awareness of the Guidelines and the NCP, including: training for the private sector, CSOs and public officials on the Guidelines and due diligence standards, as well as events focusing on key sectors (e.g. agriculture, garment and textile) and key topics, including human rights and environmental issues. The NCP is also encouraged to organise activities that focus specifically on the specific instance process with examples of cases.

In 2021, the NCP experienced a sharp increase in its participation in events organised by others. Indicatively, the NCP participated in 56 virtual promotional events in 2021, compared to ten in 2020 and one in person event in 2019. Some of these events were attended by a large audience (50 to 100 participants). They overall covered broad audiences and topics (e.g. the Guidelines, NCPs, policy coherence, sustainable development). More in detail, the NCP reports participating actively (i) in ten events as speaker, (ii) through presentations at specific events on due diligence, (e.g. Forum on Responsible Supply Chains in the Garment and Footwear Sector), (iii) events organised under the auspices of the United Nations. In terms of content, the NCP has developed a template presentation that includes an overview of the Due Diligence Guidance and sectoral guidance. Stakeholders welcome the NCP Secretariat's responsiveness to invitations for events.

The NCP also notes efforts to cooperate with key stakeholders in awareness-raising activities. The NCP launched the Due Diligence Guidance to key business audience in Portuguese in September 2020⁴¹ and the Due Diligence Guidance for Responsible Supply Chains in the Textiles and Footwear Sector.⁴² Stakeholders welcomed the NCP's promotion of sectoral due diligence tools and highlighted their practical value. Based on its 2021 annual report to the OECD, the NCP promoted the Guidelines among business organisations, trade unions, CSOs, government agencies and investment promotion agencies. The promotional activities focused on the Guidelines and the NCP's work overall. Strong cooperation exists with the private sector through the CNI, including through regular meetings and joint activities. CNI participated in a promotional event co-organised by the NCP in 2021 and sought the NCP's assistance on research regarding the implementation of the Guidelines by the private sector in Brazil. The main partner of the NCP in civil society is Proteste, member of the Euroconsumers Group and partner of the NCP. Proteste leads the sustainability agenda of the Private Sector Advisory Board (CONEX).⁴³ Among other activities, the NCP co-hosted a session in a promotional event organised by Proteste in 2021. One CSO representative also notes that the NCP recently liaised more regularly with CSOs and submitters of specific instances.

⁴⁰ The session is also available online: [Responsible Business Conduct and the OECD Guidelines Trends and Opportunities](#).

⁴¹ Brazil NCP, [Guia da OCDE de devida diligência para uma conduta empresarial responsável \(24/09/2020\)](#)

⁴² OECD Forum on Due Diligence in the Garment and Footwear Sector, [Responsible garment and footwear supply chains in the Latin America and the Caribbean region: key issues and opportunities - Cadenas de suministro responsable en el sector textil y del calzado en la región de América Latina y el Caribe: cuestiones clave y oportunidades](#)

⁴³ Proteste is a non-profit organisation advocating for the Brazilian consumers' rights; Proteste, [Quem Somos](#). The Private Sector Advisory Board (CONEX) is a department under the Board of Trade Agency in the Ministry of Economy. It is at the same level as CAMEX.

The NCP's promotional activity is uneven between stakeholder groups. One stakeholder notes that trade unions have not participated in any promotional activities. The NCP intends to strengthen relations with trade unions.

Webpage

The NCP has a dedicated webpage on the Ministry of Economy's website. The NCP's webpage is available in Portuguese, English and Spanish.⁴⁴ It is easily identified through online search engines, well-designed and comprehensive. Stakeholders shared overall positive experiences from access and navigation in the NCP's webpage. They noted that recent updates to the webpage make it more user friendly. In practice, the webpage plays an important part in the NCP's promotional efforts and its accessibility. Indicatively, the NCP Secretariat uploaded information on the peer review⁴⁵ and its work plan.⁴⁶

Information available on the webpage of the NCP is extended. It covers:

- an introduction to the NCP, including links to the various legal instruments setting up the NCP and its membership (see above), the video of presentation of the NCP, the NCP's rules of procedure (including the results of the public consultation, see below), the Portuguese and English version of the Guidelines and the CAMEX brochure on the NCP;
- a section entitled 'About the OECD Guidelines and the NCP of Brazil' including a short introduction to the Guidelines and the NCP, as well as links to the Due Diligence Guidance in Portuguese and a broad description of RBC;
- a section entitled 'Promotion of the OECD Guidelines for Multinational Enterprises', including a short text to explain the promotional mandate of the NCP, and links to the Portuguese version of the Guidelines, and to a short text explaining due diligence and links to the various OECD due diligence guidance instruments. This section also features a button for organisations (e.g. enterprises, stakeholder organisations) to request a presentation of the Guidelines at their premises;
- a link to a page on promotion, which outlines the promotional events where the NCP participated, and includes links for further information, registration details and recordings where available;⁴⁷
- a section entitled 'Submitting an allegation of non-observance (Specific Instance)', including a short presentation of the specific instance mechanism, links to the rules of procedure, the online submission form and instructions on how to submit a case to the NCP. Links to the list of cases handled by the Brazilian NCP and to the list of other NCPs are also available;
- a call for experienced mediators interested in collaboration in the specific instance process, including the mediator information form for the roster of mediators for NCPs;
- a section on the reports of the NCP to the OECD and to government (see above);
- a contact section with address, email and phone number of the NCP;
- an update on the impact of the Covid-19 pandemic on the specific instance process. The relevant text notes that the NCP monitors the social and corporate impact of the ongoing pandemic and that the timeline of specific instances may be affected.

⁴⁴ The Portuguese version of the webpage is available here: <https://www.gov.br/produtividade-e-comercio-externo/pt-br/assuntos/CAMEX/pcn> ; the English and Spanish versions are available through automatic translation.

⁴⁵ [Peer Review do PCN Brasil](#).

⁴⁶ [Plano de Trabalho do Ponto de Contato Nacional – 2022](#).

⁴⁷ [Promoção das Diretrizes da OCDE](#).

The NCP also promotes its work through active social media accounts. According to the NCP, its social media presence was strengthened in 2021 through the official accounts of Special Secretariat for Foreign Trade and International Affairs (Secint) on Twitter⁴⁸ and LinkedIn.⁴⁹ However, recent updates on the NCP were not available under the Secint accounts in mid-February 2022. The accounts rather focused on export and international commerce updates and the launch of accession discussion to the OECD.

Promotion of policy coherence

Different policy initiatives on RBC have been undertaken by governmental agencies in Brazil, and the NCP has been involved in many of them in some capacity. According to the Secretariat of Foreign Trade (Secex) at the Ministry of Economy, RBC standards are integrated in negotiated bilateral investment treaties since 2012.⁵⁰ The Undersecretariat for Foreign Investment (Sinve), where the NCP is located, contributes to the process. In 2018, Brazil took an important step towards policy coherence for RBC with the adoption of the National Guidelines on Business and Human Rights.⁵¹ More recently, the MMFDH announced in 2021 that it would start the process to develop a National Action Plan (NAP) on Business and Human Rights. The MMFDH, as part of the NCP's Working Group, closely coordinates with the NCP on the development of the plan. Other ambitious initiatives by government agencies active in RBC matters include (i) the Mobilisation for Employment and Productivity initiative led by the Ministry of Economy, (ii) the database maintained by the Ministry of Labour and Social Security, listing employers employing workers in slave-like conditions, (iii) the Child Labour Eradication Programme (PETI) of the Special Secretariat for Social Development, and (iv) programmes carried out by the Comptroller General of the Union (CGU) on business integrity, e.g. ProEthics.

Even though there is no legal requirement for businesses to disclose social or environmental impacts, Brazil adopted a range of regulations to push for addressing environmental, social, and governance aspects of corporate conduct by companies. Brazil has also introduced RBC considerations in the areas of trade and investment. For example, regulations issued by the National Monetary Council (CMN) and the Central Bank of Brazil (BCB) refer to the Guidelines.⁵² The most recent update of the regulatory framework covers updated rules on social risk, environmental risk, and climate-related risk management by institutions of the National Financial System.⁵³ The framework also requires these institutions to launch, implement and disclose a Social, Environmental and Climate Responsibility Policy and to disclose information on the treatment of relevant issues.⁵⁴ Finally, BCB regulations have introduced provisions related to social, environmental and climate issues to be taken into consideration by financial institutions for rural credit operations.⁵⁵ The PACER, currently under development by the Undersecretariat for Foreign Investment (Sinve) where the NCP is located, outlines these initiatives (see Box 4.1).

⁴⁸

<https://twitter.com/secinteconomia/status/1458862896562192385?s=24>https://www.linkedin.com/posts/secinteconomia_sustentabilidade-activity-6864197197999706113-jNljextra:https://www.gov.br/economia/pt-br/canais_atendimento/imprensa/notas-a-imprensa/2021/novembro/se-CAMEX-implementa-agenda-em-torno-das-politicas-de-conduta-empresarial-responsavel-cer

⁴⁹ <https://www.linkedin.com/company/secinteconomia/>

⁵⁰ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#), p. 113.

⁵¹ [Decree 9 571/2018](#)

⁵² CMN Resolution No. 4.557 of 2017 as amended by CMN Resolution No. 4,943 of 2021; Resolution No 4,945 of 2021 and BCB Resolution No. 139, of 2021

⁵³ <http://www.bcb.gov.br/en/financialstability/sustainability>http://www.bcb.gov.br/en/about/bcbhastag_sustainability

⁵⁴ For an overview of the update, see BCB, '[New regulation on risk management and social, environmental and climate responsibility](#)' (15 September 2021).

⁵⁵ BCB Resolution No. 140, 2021.

Alongside the NCP, Brazil has set up *ad hoc* non-judicial grievance mechanisms. The National Council on Human Rights (Conselho Nacional de Direitos Humanos, CNDH) notably functions as a grievance mechanism in relation to alleged human rights violations.⁵⁷ Its presidency and vice-presidency are held by a representative of the public sector and a representative of civil society, who alternate roles after one year in office. The CNDH recently released the National Guidelines for the adoption of a Public Policy on Human Rights and Business (Diretrizes Nacionais para uma Política Pública sobre Direitos Humanos e Empresas).⁵⁸ Its links with the NCP could be further explored to mutually reinforce their contribution to RBC.⁵⁹

Box 4.1. Development of a National Action Plan on RBC in Brazil (PACER)

In December 2020, the CONINV adopted a resolution to elaborate a National Action Plan on RBC (Plano de Ação em Conduta Empresarial Responsável, PACER). The PACER is piloted by the Executive Secretariat of CAMEX, through the Undersecretariat for Foreign Investment (Sinve), where the NCP is located. This is a promising development and an opportunity to increase uptake and implementation of RBC in Brazil, and to improve policy coherence across relevant government agencies. In particular, the fact that the Ministry of Economy is leading on this project will be key to get buy-in from, and send a strong signal to, the business community. The leading role of the NCP in this regard is also a major opportunity to increase its standing within and outside of government, but also to act as an agent of coherence across government.

CONINV Resolution 02/2020 instructs CAMEX to consult with relevant government departments, as well as the private sector. Article 4 of the Resolution states that the themes covered by the PACER should correspond to those of the OECD Guidelines. Additionally, it states that the plan is meant to support the accession of Brazil to the OECD.

In terms of resources, the Undersecretariat for Foreign Investment (Sinve) has hired an additional official for this purpose and the NCP has been providing support to the process. The work on the PACER has been ongoing since 2021. Preparations of the PACER include data collection, analysis of stakeholders' input, potential interviews with stakeholders, public consultation with CSOs. Its delivery is foreseen for September 2022.⁵⁶ The NCP reports consultation within government and more than 100 responses by companies to the stakeholder questionnaire.

Sources: OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#); [NCP webpage](#), [PACER](#).

The NCP engages actively with other governmental authorities on RBC issues through the Working Group membership and its location. According to the NCP, its interagency structure allows for great visibility within the Brazilian government and with different groups of stakeholders. Its role in policy coherence is notably achieved through common activities. The Working Group members disseminate actively information to other ministries. They also invite the NCP to participate in their RBC-related activities. Representatives of other agencies report regular dissemination of questionnaires by the NCP on OECD initiatives, including on anti-corruption, and surveys conducted by the NCP. Moreover, the NCP participates in common activities with other agencies. Indicatively, Working Group members participated in the “Responsabilize-se” campaign together with the MMFDH in 2021. During the same year, the NCP reports cooperation in

⁵⁶ After the virtual visit, the PACER was approved by CONINV on 15 September 2022.

⁵⁷ [National Council on Human Rights](#).

⁵⁸ Resolution No. 5 of 2020 (National Human Rights Council of Brazil, 2020); see also OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#)

⁵⁹ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#), p. 132.

promotional activities notably organised by the National Commission for the Eradication of Slave Labour (CONATRAE) under the MMFDH, the National Secretariat for Consumers (Senacon), the Secretaria de Gestão do Ministério do Planejamento (SEGES) on public procurement and the Secretariat on Exports of the Ministry of Economy (Secex). In 2021, the NCP also reported partnerships with other strategic public bodies/agencies in Brazil, such as the Executive Office of the President, the Securities and Exchange Commission and the Ministry of Agriculture, Livestock and Supply.

One of the major initiatives led by Brazil regarding policy coherence for RBC is the elaboration of a National Action Plan on RBC (PACER) (see Box 4.1). According to the relevant resolution, the themes covered should correspond to those of the Guidelines.⁶⁰ In December 2020, CONINV gave a mandate to the NCP to develop the PACER. The NCP provides public information on the development of the PACER through its webpage.⁶¹ The NCP also provides online a stakeholder questionnaire for the PACER's development.⁶² The questionnaire starts with a description of RBC standards, including due diligence, and the role of the NCP.

Efforts should be made to ensure consistency between the two plans. The Ministry of Economy through the NCP and the MMFDH have regularly indicated working jointly to ensure consistency between the development processes of the PACER and the NAP on Business and Human Rights.⁶³ Various exploratory meetings during the preparation of a roadmap and initiation of a consultation process with stakeholders. The MMFDH reports participating in the preparations of the stakeholders' questionnaire for the PACER, mapping of issues and listing of relevant CSOs. Stakeholders noted the need to ensure clear scope and continuous coordination of the two initiatives.

In general, the NCP could position itself more consistently within government to foster coherence of policy initiatives with RBC. In the current context, there are many opportunities for the NCP to further engage with agencies across the government beyond its membership and location. The OECD recently conducted an RBC Policy Review of Brazil, where the above and the corresponding role of the NCP are discussed at length.⁶⁴ The NCP should notably focus on ensuring that initiatives across the government that are relevant to RBC align with the Guidelines.

Requests for information

The NCP has their contact details listed on the webpage (email and telephone). It invites users to contact for any enquiries.

Cooperation amongst NCPs

The NCP engages with other NCPs through multilateral and bilateral meetings (see Chapter 6 Specific Instances below). The NCP Coordinator also participated in an event organised by another NCP in 2021. It has also been an active participant in the meetings of the regional network of NCPs from Latin America.

⁶⁰ Article 4, CONINV Resolution 02/2020.

⁶¹ Brazilian NCP, [ELABORAÇÃO DO PLANO DE AÇÃO EM CONDUTA EMPRESARIAL RESPONSÁVEL – PACER](#).

⁶² Brazilian NCP, [Questionnaire for interested parties on the development of the PACER](#).

⁶³ OECD (2022), [OECD Responsible Business Conduct Policy Reviews: Brazil](#).

⁶⁴ *Ibid.*

	Findings	Recommendation
2.1	The NCP has made clear progress in increasing promotion, including through the adoption of annual promotional plans, participation in virtual events and renovation of its website. However, its visibility can be further strengthened. Stakeholders noted challenges in promotion related to the large national territory and notably asked for more information on the NCP, the specific instance process, and trainings on sectoral due diligence guidance. /	The NCP should increase promotional activities to strengthen its visibility across the country and in all stakeholder groups. To that end, the NCP could conduct a country-wide stakeholder mapping and identify multiplier organisations with broad networks and geographic reach.
2.2	The NCP's role in promoting policy coherence was recently strengthened, including through its contribution to CAMEX's mandate to develop a National Action Plan on RBC (PACER). Although the NCP also operates in a context of growing activity on RBC by other governmental agencies, the NCP itself is not consistently involved despite sometimes the presence of the relevant agency in the Working Group.	In order to increase its contribution to policy coherence in Brazil, the NCP should make efforts to better leverage its interagency structure and the policy expertise developed in the context of the PACER. It should also raise more awareness of the Guidelines in key parts of government. The NCP could also offer its expertise in relevant policy development, where appropriate.

5. Specific instances

Overview

At the time of the virtual visit, the NCP had received 43 specific instances in total (28 since 2011). This represents one of the highest number of cases in the entire NCP network and the highest in Latin America. In total, 27 specific instances have been concluded by the NCP, five of which are currently undergoing follow-up,⁶⁵ 11 were not accepted,⁶⁶ and five are ongoing.⁶⁷

Among the 27 concluded cases:

one was concluded with agreement within the NCP process and recommendations;⁶⁸

19 were concluded without agreement,⁶⁹ including 12 which resulted in recommendations;⁷⁰

7 were concluded with agreement outside the NCP process,⁷¹ including one with recommendations.⁷²

The main sectors concerned by specific instances handled by the NCP are manufacturing (10 cases), financial and insurance activities (8), agriculture, forestry and fishing (8), as well as mining and quarrying (7). In terms of submitters, trade unions (in some cases together with other stakeholders) have submitted more than half of the cases (17). They are followed by CSOs (12) and individuals (13), whereas one case has been submitted by a business organisation. In the past few years, the NCP witnessed a decrease in submissions by trade unions and an increase of submissions by individuals.

The most frequently raised chapters of the Guidelines in cases handled by the NCP are the chapters on General Policies (II) (28 cases), Employment and Industrial Relations (V) (22), Human Rights (IV) (22), followed by Disclosure (III) (10), and Environment (VI) (9).

An overview of all cases handled by the NCP is available in Annex D.

⁶⁵ Specific instances 02/2015, 03/2018, 07/2018, 01/2020, 02/2020.

⁶⁶ Specific instances s/n/2004, s/n/2006, s/n/2010, 04/2012, s/n/2013(i), s/n/2013(ii), s/n/2015, 01/2017, s/n/2018, 02/2021, 03/2021.

⁶⁷ Specific instances 02/2018, 04/2018, 05/2018, 06/2018, 04/2020.

⁶⁸ Specific instance 01/2014.

⁶⁹ Specific instances 01/2003, 01/2006, 03/2007, 07/2007, 01/2010, 02/2010, 01/2012, 02/2012, 02/2014, 03/2014, 01/2015, 01/2018, 03/2018, 07/2018, 01/2020, 02/2020, 05/2020, 06/2020, 01/2021. For an overview of reasons of concluding these cases, see paras. 126-129 below on Concluded cases.

⁷⁰ Specific instances 01/2010, 02/2010, 01/2012, 02/2012, 01/2014, 02/2014, 02/2015, 01/2018, 03/2018, 07/2018, 01/2020, 02/2020.

⁷¹ Specific instances 04/2007, 05/2007, 03/2010, 03/2012, 01/2013, 02/2015, 03/2020.

⁷² Specific instance 02/2015.

Rules of Procedure

Overview

The Rules of Procedure (RoP) of the NCP are available on the NCP's webpage.⁷³ The RoP were revised in 2019 and were subject to public consultation for two months.⁷⁴ They were then promulgated in March 2020 by a resolution signed by Undersecretariat for Foreign Investment (Sinve).⁷⁵ Stakeholders welcomed the inclusive public consultation through written and in-person comments. The previous RoP dated from November 2016,⁷⁶ September 2012,⁷⁷ and June 2007.⁷⁸ The new RoP apply to all future cases, and to pending cases for the rest of the process, in consultation with the parties (Section 12). The RoP are available in Portuguese and in English. Stakeholders welcome the clarity and level of detail in the current RoP. They also note clear and helpful communications with the NCP Secretariat on their application.

During the peer review, the NCP noted its plans to review its RoP. During the virtual visit, the NCP acknowledged many of the issues described in this Section and indicated its intention to take them into account in the review of the Rules of Procedure.

The RoP open with a presentation of the NCP and its role, of RBC and the Guidelines. They further state that they are a living document and will be updated as often as necessary (Section 1). The RoP also contain a glossary of key terms (Section 2) and a form to submit a case to the NCP (Section 13 – Annex).

The RoP include a glossary of key terms, which can be found below in Table 5.1.

Table 5.1. Glossary of key terms

Key term	Definition
Admissibility	The evaluation of elements described in Section 4 by the NPC Coordinator. It precedes the Initial Assessment.
Brazilian NCP	Brazilian National Contact Point
Complainant	The individual or entity that submits a Specific Instance to the NCP.
Final Declaration	A document issued to finish a Specific
Good Faith	The principle of good faith in the in the context of the OECD Guidelines means responding promptly, maintaining confidentiality where appropriate, and genuinely engaging in procedures to find a solution to the issues raised under the Guidelines.
Good Offices	The phase in which the NCP seeks to facilitate dialogue between the Parties aiming at reaching a mutual agreement on the resolution of the problems raised. Good Offices may include mediation conducted by the NCP or professional mediators.
Initial Assessment	The phase where the NCP decides, based upon substantive consideration, if the complaint must be accepted, rejected, or transferred to other NCP.
IWG-NCP	Interministerial Working Group (Decree no. 9.874 / 2019)
NCP Coordinator	The member of the IWG-NCP responsible for coordinating the NCP in its technical issues, – for instance, assessing a claim's admissibility - and administrative activities.
OECD	Organization for Economic Co-operation and Development
OECD Guidelines	The OECD Guidelines for Multinational Enterprises are a document validated by adhering countries, which presents international standards of best practices for responsible business conduct.
Parties	Complainant and Respondent

⁷³ <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn/produtos/formularios/pcn-manual-de-procedimentos-para-instancias.pdf>

⁷⁴ See <http://participa.br/consulta-publica-manual-de-procedimento-do-ponto-de-contato-nacional-da-ocde-CAMEX/consulta-publica-manual-de-procedimento-do-ponto-de-contato-nacional-da-ocde>

⁷⁵ See <https://www.in.gov.br/web/dou/-/resolucao-n-1-de-3-de-marco-de-2020-245978323>

⁷⁶ Resolution 01/2016 of 16 November 2016.

⁷⁷ Resolution 01/2012 of 14 September 2012.

⁷⁸ Resolution 01/2007 of June 2007.

Key term	Definition
Procedimental Orientations and Comments	A OECD document that describes how government should create their NCPs and how the NCPs operate and take decisions related to the implementation of their mandate. This Orientations aim at facilitating cooperation between NCPs and helping interested Parties to better understand how NCP works.
Respondent	The multinational company against which the complaint is made.
Specific Instance/Complaint	Specific Instance is the common word used by OECD referring to a complaint submitted to NCP about company conduct concerning the OECD Guidelines. In this Manual, the expression "Specific Instance" and the word "Complaint" are synonyms.

Source: NCP (2019) Brazilian NCP Procedure Manual for Specific Instances, <https://www.gov.br/produktividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn/produtos/outros/procedure-manual-ncp-brazil.pdf>

The RoP are organised around five key phases:

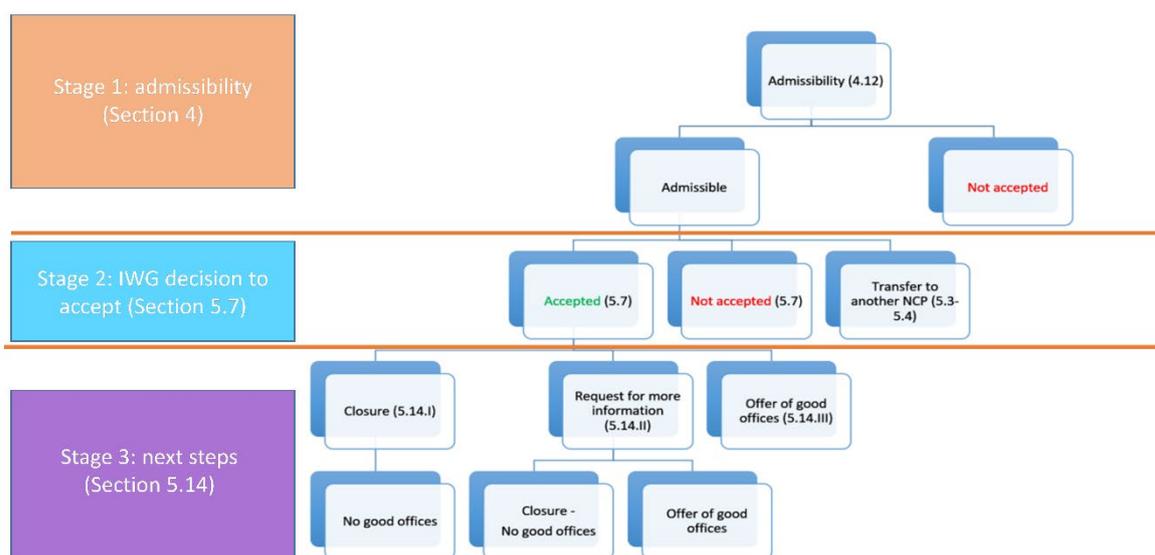
1. Presentation of a specific instance
2. Initial Assessment
3. Good Offices and Mediation
4. Final Declaration
5. Post completion: Follow up.

Filing a complaint and admissibility

Section 4 of the RoP deals with the filing of a case and its admissibility. It opens by stating that any natural or legal person that can demonstrate a link with, or the pertinence of, the issues which are the object of the case. Submitters acting on behalf of another person must demonstrate that they are authorised to represent them (Section 4.2).

The process followed by the NCP until the end of the initial assessment phase is complex. It consists of three stages (Sections 4 and 5) (for a thorough overview, see Figure 5.1). During the first stage (Section 4), the NCP Coordinator decides within 45 days of submission if the case is admissible in the sense defined above. In case of missing information, the Coordinator may request the submitter to complete its submission within 30 days, failing which the NCP Coordinator will reject the case. Receipt of additional information by the NCP, during the whole process, will be acknowledged within five days (4.18-19).

Figure 5.1. Initial assessment process under the RoP



The information which should be contained in a submission to be deemed admissible is specified in Section 4.12 and reflected in the template submission form (see Box 5.1). Submitters are not allowed to raise new issues after the submission of the case. Exceptionally, they can report facts that are new or were unknown at the time of the submission, during the initial assessment phase only (Section 4.7). Moreover, issues already handled by the NCP or by another NCP may not be the object of a new submission, unless it contains new facts or facts unknown at the time of the first case (4.15).⁷⁹

⁷⁹ For recent practice, see specific instance 04/2020.

Box 5.1. Template Form to Submit a Specific Instance to the Brazilian NCP

This document provides the minimum elements required to submit a Specific Instance to the Brazilian National Contact Point (NCP) for Responsible Business Conduct.

For further information and details, please consult the NCP Procedures Manual at <https://gov.br/pcn>. The Complaint shall contain:

- I. The identification of the Complainant(s) and, where applicable, the organization represented, specifying the names, CPF or CNPJ (passport or I.D., if foreign), addresses (physical and electronic) and telephone numbers (landline and mobile, when applicable);
- II. The identification of the multinational company(ies) object of the Complaint, specifying the name of the representative in Brazil with mailing address (physical and electronic) and telephone number;
- III. The indication of the country or countries in whose territory the issues arose;
- IV. A detailed description of the facts object of the complaint, indicating the article(s) of the Guidelines that would not have been observed by the multinational company(ies), applicable to the Specific Instance;
- V. An explanation of how the alleged non-compliance with the Guidelines affects, even potentially, the Complainant(s) or the persons represented by them;
- VI. A description, if applicable, of the efforts undertaken by the Complainant(s) with the aim of making the multinational company(ies) deal with the alleged non-compliance with the Guidelines and the results of those efforts;
- VII. A copy of documents or information that may help understand the facts or circumstances that would characterize the alleged non-compliance with the Guidelines, as well as a copy of the documents related to the efforts referred to in item VI;
- VIII. An indication of data/information considered confidential
- IX. Information if the object of the Complaint is being processed by the judiciary, in other national or international administrative bodies, or in any international entity. Whenever possible, the Party(ies) shall submit to the NCP the documents that prove this situation and that are related to the presented Specific Instance; and
- X. The signature(s) of the person(s) submitting the Specific Instance.

Identification of the Complainant(s):

- a. From the Complainant(s): Names, CPF or CNPJ (passport or I.D., if foreign), addresses (physical and electronic) and telephone numbers (landline and mobile, when applicable)
- b. Affected party(ies): If the Specific Instance is presented on behalf of a third party (individuals, organizations, groups, associations, etc.), please provide details of the affected party(ies)
- c. Link: Specify the link between the Complainant(s) and the affected party (ies)

Identification of the multinational company(ies) object of the Complaint

- a. Name of representative in Brazil or abroad (where applicable), address (physical and electronic), and telephone number

b. Indicate the country(ies) where the alleged non-compliance occurred

c. Is the company(ies) already aware of the Complaint? If YES, what was the reaction of the company representative(s)?

Identification of any interested third party that the Brazilian NCP should consult for more information: Provide all useful details and/or contact details for the Brazilian NCP to identify and contact any interested third party

Description of the problem(s) which is the subject of the Complaint

a. Indicate the Chapter(s) and/or Paragraph(s) of the Guidelines that the multinational company(ies) is(are) not complying with

b. A detailed description of the object facts of the complaint, possibly linking the allegations to the above-mentioned Chapter and Paragraph of the Guidelines. Please also state how the alleged non-compliance with the Guidelines affects, even if potentially, the Applicant(s) or the persons represented by it

c. Indicate the expected results of a possible mediation

Parallel Proceedings

a. Is there any pending or completed process on the matter before other national / international public / private authorities? (administrative, judicial, public safety authority)

Note: The documents referring to these complaints that prove this situation and that are related to the allegation presented must be sent to the Brazilian NCP

If YES, please inform which authority the Specific Instance was submitted to

Is the case pending a decision?

b. Is there any National Contact Point (NCP) from another country aware of or has been triggered in relation to this Complaint?

If the Specific Instance has been submitted to other NCP(s), please indicate which NPCs are involved and which NCP is responsible for assistance to the Party (leading NCP)

Confidentiality: Indicate the information and/or documents that should be treated confidentially

Documentation: Please list the documents attached to this form that support the Allegation

Other relevant information

By this submission form, I request the Brazilian NCP to provide its good offices for the resolution of the issue stated above.

I authorize the use of the data and information contained in this document, in accordance with the provisions of Decree No. 9,874, of 06/27/2019, and the Brazilian NCP Procedures Manual.

I promise to maintain confidentiality regarding the submission of this Specific Instance until its effective acceptance or rejection, as provided in the Brazilian NCP Procedures Manual.

Source: NCP (2019), Annex to the Brazilian NCP Procedure Manual for Specific Instances, <https://www.gov.br/produktividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn/produtos/outros/procedure-manual-ncp-brazil.pdf>

Some elements required under Section 4 may be read to go beyond the initial assessment criteria specified in para. 25 of the Commentary to the Procedural Guidance. The submission must notably:

- demonstrate the link between the issues and the Guidelines, as well as the direct involvement of the enterprise in a violation of the Guidelines (Section 4.8);
- specify the identity of the company, with name and contact details of its representative in Brazil (Section 4.12.II).;
- provide a possible link between the allegations to the Guidelines' Chapter and Paragraph of the Guidelines (Section 4.12.IV);
- specify the reaction of the company representative if the company is aware of the complaint (submission form).

The NCP has applied a flexible interpretation of the criteria in practice in some specific instances. Limited absences of information will not necessarily prevent acceptance if the case is otherwise in good order. For example, the NCP accepted submissions without the contact information of the company's representative.⁸⁰

To help ensure that the complaint meets the criteria above, the NCP Secretariat supports submitters. In particular, the NCP Secretariat requests additional information, where needed, by email, and clarifies the procedure and missing elements through meetings. The NCP webpage also invites questions on the submission of specific instances by email.

The RoP limits the geographic scope of the specific instance mechanism to cases involving (i) multinational companies based in Adherent countries operating in Brazil or (ii) Brazilian multinational enterprises operating outside Brazil in Adherent or non-Adherent countries (Section 4.3), which would rule out enterprises headquartered in non-Adherent countries operating in Brazil. This is inconsistent with the Guidelines, which refer in particular to multinational enterprises based in developing countries (Preface, para. 3). The NCP notes that in practice, it has accepted one case under the current RoP involving an enterprise headquartered in a non-Adherent country.⁸¹

Section 4 also addresses the scope of multinational enterprises. It specifies that the NCP will adopt a broad definition of multinational enterprises for the purpose of specific instances (Section 4.4).

Acceptance of a case is further restricted through a time limit of 60 months between the date of the facts and the date of receipt of the complaint, which is not mentioned in the online submission form. The current time limit has resulted in non-acceptance of one claim in one recent specific instance.⁸² The limit used to be 12 months in previous NCP Resolutions. Six specific instances had not been accepted based on the previous time limit.⁸³

In recent specific instances, the NCP followed a flexible approach to the time limit. In six cases, the NCP interpreted the time limit in the light of the continuous nature of events and the lack of access of the submitter to information. One specific instance,⁸⁴ was accepted based on new information after two previous complaints on claims regarding linked facts were not accepted, among other reasons, under the previous 12-month limit.⁸⁵

A complaint can be submitted in several ways (Sections 4.5-4.6). Submitters can use the electronic information system of the Ministry of Economy. According to the English version of the NCP webpage in

⁸⁰ 02/2018, 07/2018.

⁸¹ See 06/2020.

⁸² *Ibid.*

⁸³ s/n/2010, 04/2010, 04/2012, s/n/2013(i), s/n/2013(ii), s/n/2018.

⁸⁴ 04/2020.

⁸⁵ s/n/2013(i), s/n/2018.

February 2022, the online submission form was temporarily disabled. Submission was still possible through email or regular mail.

Initial assessment

The second and third stages of the decision to accept a specific instance are described in Section 5 of the RoP: acceptance of the specific instance and next steps of the procedure (see Figure 5.1).

Section 5.7 specifies the elements taken into consideration to decide whether the specific instance should be accepted for further examination, rejected or transferred to another NCP (see Box 5.2).

Box 5.2. Factors considered during the Initial Assessment Phase

5.7. The rapporteur will indicate to the IWG-NCP whether the Specific Instance should be accepted or not, within 30 (thirty) consecutive days. This report will consider, without prejudice to other information provided:

- I. the identity of the party(ies) concerned and its interest in the matter;
- II. whether the issue raised is legitimate, presented in good faith and relevant to the interpretation of the Guidelines;
- III. whether the issue is relevant and substantiated;
- IV. whether there is a direct link, albeit a potential one, between the Complainant and the issue raised;
- V. whether there seems to be a link between the company'(ies) activities and the issue raised in the Specific Instance;
- VI. whether the Specific Instance gathers elements that hold thematic pertinence with the chapters addressed by the Guidelines;
- VII. whether the Complaint contains sufficiently delimited focus;
- VIII. whether the Specific Instance presents facts and evidence, verifiable by objective criteria;
- IX. the relevance of applicable laws and procedures, including court rulings;
- X. how similar issues have been or are being treated in other domestic or international proceedings; and
- XI. whether the consideration of the specific issue would contribute to the purposes and effectiveness of the OECD Guidelines.

Source: NCP (2019), Section 5.7., the Brazilian NCP Procedure Manual for Specific Instances, <https://www.gov.br/produktividade-e-comercio-exterior/pt-br/assuntos/CAMEX/pcn/produtos/outros/procedure-manual-ncp-brazil.pdf>

Some criteria seem to set a high threshold for accepting cases at the second stage:

- whether the claim is 'legitimate' (II);
- whether there is a 'direct link [...] between the Complainant and the issue raised' (IV);
- whether the case presents elements of 'thematic pertinence with the chapters addressed by the Guidelines' (VI);
- whether the submission includes 'detailed facts and evidence', verifiable by means of objective criteria (VIII).

The criteria for undertaking the initial assessment would benefit from closer alignment with the language in para. 25 of the Commentary. In particular, the link between the issues and the Guidelines, as well as the ‘direct link’ (Sections 4.8, 5.7.IV) could be clarified to reflect the various relations that an enterprise can have with negative impacts under the Guidelines. The criteria of ‘legitimacy’ and ‘detailed facts and evidence’ could be further adjusted to ensure that the initial assessment does not amount to a thorough assessment of all issues (see also Analysis of NCP statements below). To further enhance predictability of the specific instance process, admissibility and acceptance criteria under Sections 4.8, 4.12 and 5.7 could be consolidated.

In terms of process, after consultation of the NCP Working Group, the NCP Coordinator designates a rapporteur, preferably the representative of the body competent for the issues in question (Sections 5.5.-6). There is a demand for transparency in the designation of the rapporteur and guarantees of impartiality regarding the role (see also Chapter on Institutional Arrangements above). Some stakeholders asked for designation based on expertise in the issues arising under the Guidelines and the possibility of designating co-rapporteurs. The rapporteur must advise within 30 days whether the case should be accepted or not.

The decision on initial assessment is taken by simple majority, with a quorum of half of the members of the working group present, and communicated to the parties (Section 5.7.1). However, a decision of acceptance does not automatically entail an invitation to the parties to enter into mediation (Section 5.9).

The NCP informs the company after the second step of the initial assessment phase (Section 5.10-12). The NCP will notify at that stage the company involved, share the information of the case with a short summary, and invite it to present its counter-arguments within 15 days, renewable (Section 5.10-12). For accepted cases since 2011, this takes in average 118 days, *i.e.* approximately 4 months. Business stakeholders have expressed concern that, during this period, the company may be surprised to find out about the submission through other sources, e.g. media, information published by the submitter.

After examining the response of the company, the rapporteur will advise within 30 days on the next steps of the process, recommending one of the following options (Section 5.14):

- closure of the specific instance;
- request for more information to the parties;
- offer of good offices to the parties, including mediation;
- other course of action.

Under the RoP, if a case is accepted, the NCP publishes on its webpage a summary of the complaint, noting that acceptance does not imply a decision as to observance or not of the Guidelines (Section 5.8.1). The initial assessment statement itself is however not necessarily published, nor shared with the parties for comments. If a case is not accepted, the NCP publishes information through a ‘final declaration’ (Section 5.16), which is shared with the parties for comments prior to finalisation. The ‘final declaration’ includes a specific instance overview, a description of the process and recommendations, where appropriate (Section 7.4).

In practice, and at the time of the virtual visit, among the seven non-accepted cases received since 2011:⁸⁶

- three website summaries included a description of the issues and reasons supporting the NCP’s decision, but no final statement;⁸⁷
- two website summaries included the relevant Chapters of the Guidelines and the reasons supporting the NCP’s decision, but no description of the issues or final statements;⁸⁸

⁸⁶s/n/2013(i), s/n/2013 (ii), s/n/2015, 01/2017, s/n/2018, 02/2021, 03/2021.

⁸⁷ s/n/2013(ii), s/n/2015, 01/2017.

⁸⁸ 02/2021, 03/2021.

- for two specific instances, no information was published.⁸⁹

The NCP should publish consistently the final statements in non-accepted specific instances, in line with Section I.C.3.a) of the Procedural Guidance. The NCP should consider revising its RoP in this regard and align its practice with para. 32 of the Commentary. The final statements in such cases should describe at least the issues raised and the reasons for the NCP's decision.⁹⁰ Publishing consistently final statements in non-accepted specific instances would also strengthen the NCP's transparency.

Good offices

Section 3 describes the nature of the good offices phase. Section 6 outlines the process.

The aim of the good offices phase is to help parties overcome obstacles in a dispute through mediation (Section 3.4). The NCP helps the parties resolve the issues through consensus and build a mutually agreed decision (Section 3.6.e).

Under the RoP, for every case accepted by the Working Group, the NCP will offer its good offices to the parties (Section 6.2). However, this contradicts Sections 4 and 5, which provide that this is the case only for specific instances which go through the three-stages initial assessment process and for which the rapporteur makes the recommendation to offer mediation to the parties (Sections 4, 5).

The good offices are divided into two phases: a preparatory phase during which the NCP provides information to the parties and plans for the dialogue; and a dialogue phase during which the parties discuss the issues with a view to finding a solution (Section 6.3).

In case of more than one submitters or respondents, if a party refuses, mediation proceeds with the parties interested and the final statement indicates the reasons raised by non-participating parties (Section 6.5-6). This scenario did not arise in practice so far.

Once the offer of mediation has been accepted, the NCP elaborates a work plan covering the objectives pursued by mediation, timelines, communication means, confidentiality rules, and a list of authorised negotiators. Parties may comment on the draft work plan and the final version must be signed by both parties and the mediator. Work plans may however vary from case to case (Section 6.9). The mediation process may be interrupted at any time upon request of a party (Section 6.10). For complex cases, the NCP may also request the assistance of experts (Section 7.2). The NCP recently consulted an expert in one specific instance.⁹¹ More specifically, the NCP consulted specialists from the National Institute for Colonisation and Agrarian Reform (INCRA) on rural property boundaries and certification. Observers may be allowed at the discretion of the NCP and the parties, provided they have an 'affinity' with the case and maintain confidentiality (Section 6.11).

Mediation has been mainly facilitated by NCP members. Mediation in this phase may be conducted either by the NCP itself or by a professional mediator (Sections 6.7-8).

Conclusion of the specific instance

Section 7 of the RoP addresses the stage of the issuance of a final statement. At this stage, the NCP issues a final statement approved by the Working Group, taking into account the need to protect sensitive or confidential information (Section 7.1).

In terms of content, the information varies for accepted and non-accepted cases. For accepted cases, the NCP may use information shared by the parties, public information, and seek support from other NCPs,

⁸⁹ s/n/2013(i), s/n/2018; the NCP notes that the information was consequently published.

⁹⁰ Procedural Guidance, Section I.C para 3(a).

⁹¹ Specific instance 06/2020.

the OECD Secretariat and experts (Section 7.2). As a general rule, all final statements should include a summary of the case, a description of the process and, when appropriate, recommendations for the company (Section 7.5). The NCP may start or resume a mediation process at any time during the drafting of the final statement (Section 7.6).

For non-accepted cases, the final statement will also include information on the process, but without a value judgment on the conduct of the company (Section 7.5.a). For accepted cases where good offices were not offered, or no agreement could be reached, the statement will also include the positions of the parties, and the reasons for which no agreement could be reached (Section 7.5.b). When an agreement was reached, it will only be disclosed with agreement by the parties (Section 7.5.c).

In terms of process, a draft is shared with the parties, who will have fifteen days to suggest changes, and provide a justification for these suggestions (Section 7.3). Once approved, the final statement is communicated to the parties, to the OECD and to the NCPs of the countries of the companies involved. It is then published on the NCP webpage (Section 7.4).

The RoP rule out the possibility for the NCP to make determinations. More specifically, the RoP specify that the NCP does not make a determination ('value judgment') regarding the conduct of the enterprise and whether it complies with the Guidelines (Section 7.5.1).

Case follow-up

Under Section 8 of the RoP, the NCP may, when necessary and with agreement of the parties, specify a timeline in the final statement to follow up on commitments made, either in the context of recommendations, or of agreements (Section 8.1). The NCP may seek information from the parties in this regard (Section 8.2), and publish a follow-up statement including the updates received (Section 8.3) on its webpage (Section 8.4). The NCP may recommend a further follow-up period. It should be noted that no provision for follow-up is made when the NCP makes recommendations in a case that did not result in an agreement. The NCP could consider aligning its RoP with para. 36 of the Commentary through mandatory definition of a follow-up timeframe in the final statement.

Analysis of NCP statements

Due to the large number of specific instances and the lack of information available for more ancient cases, the analysis below only covers cases received after 2011.

Non-accepted cases

Since 2011, seven out of 28 specific instances received have not been accepted by the NCP.⁹² Where specified, reasons for not accepting cases were:

- in three specific instances,⁹³ the submitter did not provide the required additional information;
- in one specific instance,⁹⁴ besides expiration of the time limit, the NCP found insufficient evidence regarding the alleged discriminatory measures by the company;
- in one specific instance,⁹⁵ the NCP did not find a link between the company's activities and the Guidelines;

⁹² s/n/2013(i), s/n/2013(ii), s/n/2015, 01/2017, s/n/2018, 02/2021, 03/2021

⁹³ 01/2017, 02/2021, 03/2021.

⁹⁴ s/n/2018.

⁹⁵ s/n/2015; the NCP notes that the information was consequently published.

- in two specific instances, no information was available regarding reasons for non-acceptance at the time of the virtual visit.⁹⁶

In practice, it appears that the complex process leading up to initial assessment is placing significant strains on the parties, the NCP Secretariat and the Working Group. The initial assessment phase could be simplified to strengthen the accessibility and predictability of the process, in particular with respect to the distinction between admissibility and initial assessment, and separate decisions on acceptance and next steps. The current process involves several stages of examination by the Secretariat, the Working Group and the rapporteur, requests for additional information, and rounds of separate exchanges with the parties. This approach creates a long and protracted process, often leading to delays and confusion between admissibility and initial assessment, as well as regarding the role of the different NCP bodies. For example, in some cases, the NCP re-assessed the admissibility criteria based on subsequent information provided by the company involved, although the case was already accepted.⁹⁷

The NCP also generally conducts very thorough analysis of information at the acceptance stage. For example, the initial assessment statement in the six cases related to the coffee farms (see Box 5.3)⁹⁸ included a detailed analysis of due diligence expectations in the coffee supply chain. This may exceed the level of scrutiny provided for in para. 25 of the Commentary and in some cases limit the accessibility of the NCP.

Box 5.3. Specific instance 03/2018 – Illy Café and Conectas Human Rights & ADERE-MG

On 21 August 2018, the Brazilian NCP received a specific instance from CSO Conectas Human Rights and the organization Articulation of Rural Employees of the State of Minas Gerais (ADERE-MG) alleging that the activities of six multinational companies, including Illy Café, a food sector company headquartered in Italy, in Brazil were in conflict with Chapter II (General Policies), Chapter IV (Human Rights), and Chapter V (Employment and Industrial Relations). More specifically, the submitters alleged that the six companies bought coffee from coffee farms in the Minas Gerais region where 37 individuals worked under conditions analogous to slavery. The Brazilian NCP consequently separated the case regarding each company. Four specific instances are currently ongoing in good offices and two are in follow-up.

In its initial assessment on 12 August 2019, the NCP decided to separate the cases per company and requested additional information from the submitter. The NCP appointed the Ministry of Women, Family and Human Rights as rapporteur. On 11 March 2020, the NCP decided to close the case based on lack of evidence of non-observance of the Guidelines. More specifically, on 19 November 2018, Illy Café had reported not buying coffee from the farms in question. In its final statement on 13 August 2020, the NCP made an analysis of due diligence expectations along coffee supply chains and recommended that the company continue to improve its due diligence mechanisms to encourage improvement of labour conditions in coffee farms. The NCP is currently conducting follow-up.

The parties shared positive experiences in the accessibility of the NCP and the NCP Secretariat, including clear explanations on the nature and steps of the process. Although the recommendations and follow-up process were recognised as useful, challenges were identified, notably as regards transparency of the various initial assessment steps in practice, the outcome and follow-up process, as well as access to documents submitted by one party. Challenges also related to setting deadlines that are realistic with regard to the complexity of issues.

⁹⁶ s/n/2013(i), s/n/2018(ii).

⁹⁷ See, for instance, 03/2018, 07/2018, 06/2020 on the first and third claims.

⁹⁸ 02/2018, 03/2018, 04/2018, 05/2018, 06/2018, 07/2018.

Concluded cases

Since 2011, out of the 28 cases received, 16 have been concluded. Among those, good offices were offered in seven. This means that, contrary to the process described in Section I.C. of the Procedural Guidance, the NCP may accept a case without offering good offices. Outcomes in cases in which the NCP offered good offices include the following:

- one case was concluded with agreement:⁹⁹ three mediation meetings took place between September 2015 and September 2016 between the city of Paracatu's neighbouring associations and a subsidiary company of a Canadian multinational enterprise. To facilitate dialogue, meetings were organised in the region of the affected populations' residence. Although no link was established between the company's use of explosives and the damage to homes, the company stated its intent to repair the homes in three urban neighbourhoods through a partnership project with the City of Paracatu and the active participation of the community;
- one case was concluded with agreement outside the NCP process;¹⁰⁰
- five cases were concluded without agreement.¹⁰¹ In one of these cases,¹⁰² the NCP performed mediation as part of the good offices.

Nine specific instances received since 2011 have been accepted but good offices were not offered.¹⁰³ The reasons given in the final statement to justify not offering good offices often relate to developments taking place during the 'next steps' phase following acceptance of the case. During this stage, the rapporteur may take a range of actions such as requesting additional information:

- in three specific instances,¹⁰⁴ the submitter requested closure of the case due to agreement or ongoing dialogue close to agreement outside the NCP process. The NCP did not seek information on the content of the dialogue (see also section on Parallel Proceedings below);
- in one specific instance,¹⁰⁵ the submitter withdrew the claims before the rapporteur's recommendation and preferred to address the issues in a different forum;
- in one specific instance,¹⁰⁶ the company shared a final court decision concerning a different but closely related claim (see also section on Parallel Proceedings below);
- in one specific instance,¹⁰⁷ the rapporteur recommended concluding the case based on, among others, the information provided by the company on modifications of the code of conduct, and distance which did not allow for mediation to take place.

However, in some cases, the lack of an offer of good offices seems to hinge on a reassessment of initial assessment criteria after acceptance of the case:

- in two specific instances,¹⁰⁸ the NCP found a lack of direct link between business activities of the company and allegations;

⁹⁹ 01/2014.

¹⁰⁰ 02/2015.

¹⁰¹ 01/2012, 05/2020, 01/2018, 01/2020, 02/2020.

¹⁰² 01/2012.

¹⁰³ 03/2012, 01/2013, 02/2014, 03/2014, 03/2018, 07/2018, 03/2020, 06/2020, 01/2021.

¹⁰⁴ 03/2012, 01/2013, 03/2020.

¹⁰⁵ 01/2021.

¹⁰⁶ 03/2014.

¹⁰⁷ 02/2014.

¹⁰⁸ 03/2018, 07/2018.

- in one specific instance,¹⁰⁹ the NCP decided based on (i) the expiration of the 60-month time limit; (ii) the issuance of a final judicial decision and (iii) the lack of link to Chapter VI of the Guidelines on the three respective claims.

In cases where good offices are offered, the NCP conducts mediation in-house. In four out of five specific instances currently under good offices, mediation is conducted by the Ministry of Labour and Social Security. A professional mediator will be appointed in an ongoing specific instance following agreement by the parties. The company will cover mediation expenses.¹¹⁰ In one concluded specific instance,¹¹¹ good offices included both mediation by the NCP itself and a private firm. With the consent of the submitters, the company involved in the case covered mediation costs.

The NCP reported having the objective of strengthening its mediation skills. In its 2021 annual report to the OECD, the NCP indicated that its staff had not undergone mediation training. Mediation training was also listed by the NCP as a priority topic for peer learning in its 2019 annual report. The NCP intended to make a public call for *pro bono* mediators in the second half of 2022 and reported having engaged a professional mediator in 2021.

The NCP could seek to more effectively facilitate exchanges between the parties, as in some cases, the role of the NCP in the good offices appears to have been limited.¹¹² Illustratively, in two cases recently concluded as a result of agreement outside the specific instance process, the NCP did not have access to the content of the agreement, which then limited its ability to verify that the outcome was in line with the guiding principle of compatibility with the Guidelines.¹¹³

The content of the NCP's final statements has evolved significantly in recent years. Previous statements included long factual descriptions of meetings. The NCP now issues shorter statements that provide sufficient detail while ensuring clarity and a clear timeline reflecting procedural steps and exchanges with the parties. Recent statements also provide a better description of the NCP's mandate, which may help address reports by stakeholders and the NCP that parties' expectations of the specific instance process regularly exceed the NCP's mandate.

The NCP made recommendations in nine statements since 2011 and has more consistently been doing so in recent cases.¹¹⁴ The content and extent of recommendations varies. It should be noted that the NCP has recently made detailed recommendations to companies on the concrete implementation of due diligence. For example, in one specific instance, the NCP made 12 recommendations to the companies involved which set a joint venture active in the mining sector in Brazil, including the need to (i) carry out and increase resources for due diligence, and (ii) exercise leverage over the joint venture in order to align its conduct with the Guidelines. This case concerned the collapse of the Fundão dam and respect of workers' rights, work and safety conditions (see also, relatedly, Box 5.4).¹¹⁵ In two specific instances,¹¹⁶ the NCP recommended that the company take measures to improve labour conditions in the coffee farms along its supply chain, including by improving its due diligence mechanisms and encouraging suppliers to apply RBC standards.

¹⁰⁹ 06/2020.

¹¹⁰ 02/2018.

¹¹¹ 02/2015.

¹¹² 01/2020.

¹¹³ 01/2020, 02/2020.

¹¹⁴ 01/2012, 01/2014, 02/2014, 02/2015, 01/2018, 03/2018, 07/2018, 01/2020, 02/2020.

¹¹⁵ 01/2018.

¹¹⁶ 03/2018 and 07/2018.

Box 5.4. Specific instance 01/2020 – Vale SA and Individuals Carlos Cleber Guimarães Júnior, Carla de Laci França Guimarães

On 23 January 2020, the Brazilian NCP received a specific instance from two individuals, property owners in an area near the village of Pires located in the Minas Gerais region, alleging that the failure of the Córrego do Feijão tailings dam revealed and resulted in non-observance of the Guidelines by Vale SA, a multinational mining company headquartered in Brazil. In particular, the submitters alleged that the company's conduct did not align with Chapter II (General Policies), Chapter III (Disclosure), Chapter IV (Human Rights) and Chapter VI (Environment), among others, for the following reasons: (i) failure to comply with international safety standards and lack of information on dam-related risks; (ii) failure to answer complaints through customer service channels; (iii) consequences of the failure on individuals, property and land; (iv) installation of fences without the owners' consent; and (v) the establishment of an allegedly insufficient extrajudicial dispute settlement mechanism. The Brazilian NCP has overall received four specific instances involving Vale SA on tailings dam collapse-related issues.

In its initial assessment on 13 April 2020, the NCP decided to accept the case. The NCP appointed the Ministry of Mines and Energy as rapporteur because of its relevance to the topic and sector. Following acceptance of the case, and based on the rapporteur's recommendation, the NCP requested additional information from the parties on 20 July 2020. Based on the information provided by the parties, the NCP offered good offices on 9 November 2020 and held separate meetings with the parties. On 17 December 2020, Vale SA refused the offer citing parallel discussions on remediation under its extrajudicial dispute settlement mechanism with the submitters and the broader community. The NCP made five recommendations to the company in its final statement on 28 October 2021, including the establishment of a due diligence mechanism covering a broad scope of actors interested in its activities. The NCP is currently conducting follow-up.

The parties shared positive experiences in the accessibility of the NCP and the NCP Secretariat, as well as the clarity of the process. They welcomed the NCP Secretariat's efforts to ensure due process and agreed on the potential of the NCP as an alternative to judicial proceedings. As a positive practice, the recommendations and follow-up timeline were clearly explained by the NCP. Challenges arose regarding equitability and transparency of the process, changes in the deadlines for additional information which impacted the timeline, and need for practical expertise in RBC and environment-related issues in particular.

In terms of predictability, one party asked for communication by the NCP earlier in the process. In terms of equitability and transparency, challenges concerned the provision of a non-confidential version of confidential information submitted by one party to the other and the need to ensure access to the same information for both parties.

Stakeholders and the NCP have pointed to the issue of ensuring clear expectations from parties regarding the process, and in this regard, the NCP shared that the low level of agreements may be linked to parties' expectations exceeding the scope of its mandate and parallel proceedings. Better communication around the NCP's mandate, what it can deliver and what its limitations are may contribute to addressing these concerns.

Follow-up

In the past, the NCP did not systematically conduct follow-up. In one specific instance,¹¹⁷ the NCP requested to remain informed by the company of the partnership project foreseen in the agreement. However, no formal follow-up took place and the NCP did not release a follow-up statement.

The NCP has recently developed a consistent practice of follow-up on cases resulting in recommendations. The NCP published follow-up reports and is currently undertaking a second round of review in two specific instances.¹¹⁸ In one specific instance, the follow-up report outlined the information submitted by the parties and requested additional information.¹¹⁹ In the other specific instance, the NCP considered the information provided by the company to address its recommendations but asked for complementary information. Follow-up is also under way in three specific instances.¹²⁰ In another specific instance,¹²¹ the NCP requested additional information by the company on the impact of measures taken along its supply chain.

Timeliness

The Brazilian NCP has regularly exceeded the indicative timelines for handling cases. Stakeholders note the discouraging effect of long timelines for potential submitters. The average overall duration of cases concluded by the NCP since 2011 is 852 days, *i.e.* two years and four months (see Annex D). Cases in which additional steps are applied during the initial assessment phase are particularly at risk of exceeding the timelines.

The average duration of non-accepted cases since 2011 is 438 days, *i.e.* approximately one year and three months. The NCP handled one non-accepted specific instance in three years, which included several rounds of requests for additional information.¹²²

Despite progress compared to older cases, exchange of information with the parties during the initial assessment phase still regularly exceeds the timeline set under Section 5 of its RoP. Recently, six months passed between acceptance of the case and the recommendation by the rapporteur to offer good offices to the parties.¹²³ In older cases, the submitter requested to archive the case almost one year after the last exchange of information with the parties¹²⁴ or the company requested an extension of time to present answers following acceptance of the case and responded after three years, asking for the closure of the case.¹²⁵

Alignment with the indicative timelines would strengthen the predictability and effectiveness of the specific instance process. Stakeholders agreed that the long timelines in practice challenge submitters' resources and trust. One stakeholder stressed that the NCP should provide a clear and concise timeline, as well as timely communication to submitters regarding delays. Moreover, a significant percentage of accepted specific instances since 2011 ran in parallel with other processes (see also section on Parallel Proceedings below), this number raising to 100% of ongoing specific instances at the time of the virtual visit. Shorter timelines may position the NCP as a more effective alternative to long and costly judicial proceedings.

¹¹⁷ 01/2014.

¹¹⁸ 02/2015, 07/2018.

¹¹⁹ 02/2015.

¹²⁰ 03/2018, 01/2020, 02/2020.

¹²¹ 07/2018.

¹²² 01/2017.

¹²³ 02/2020.

¹²⁴ 01/2013.

¹²⁵ 03/2014.

The NCP recognises the challenge of meeting indicative timelines and the predictability issues caused by delays, and notes that this challenge has been made worse by the COVID-19 pandemic.¹²⁶

Confidentiality and transparency

Section 10 of the RoP along with provisions under each stage of the specific instance process, set a detailed framework on confidentiality and transparency. The NCP's understanding of confidentiality within the specific process is very broad. Section 10 states that, before, during and after a specific instance, parties must respect the confidentiality of the procedures vis-à-vis third parties according to the relevant legislation (Law 13.140/2015) (Section 10.2). The duty of confidentiality extends to the parties, and to anyone having been involved in the proceedings, directly or indirectly (Section 10.7). This section also provides that, under the relevant legislation, a breach by a party of the duty of confidentiality may lead to the relevant information not being admissible in court proceedings, and/or to a tort claim by the other party (Section 10.10).

Information can be shared with the NCP on the condition that it is not shared with the other party or its contents not be released in the statement. In such cases, the information will only be transmitted confidentially to persons having a role in the process (members of the Working Group, mediator, or other civil servants) (10.3). However, the party requesting that information be treated confidentially must provide the NCP with both a confidential and a public version of the information, in which the confidential information will have been redacted (10.6). Non-confidential information is covered by the relevant legislation on access to information (10.8). The NCP notes Law 12 527/2011, which in principle allows access of interested parties to public documents following request. The NCP notes that any document retained by a public authority falls under the scope of this law. Access can be denied to confidential documents.¹²⁷

On the different phases of the process:

- Section 4 provides that the NCP will not communicate on the receipt of a specific instance until a decision on initial assessment has been made;
- the information provided by the parties to the NCP can be disclosed during the initial assessment phase, except for information protected by law (e.g. banking, commercial, industrial, etc.) and as requested by the parties. In any event, any party requesting confidentiality will have to provide a publicly disclosable summary of the information for which confidentiality is sought (Section 4.10-11);
- Section 5 provides that the NCP will keep the case confidential during initial assessment to preserve the reputation of the company. The parties must also keep the case confidential (Section 5.2);
- until a decision on the initial assessment has been made, the NCP and the submitter will keep the name of the parties confidential in order to protect the reputation of the company (10.9.1). Any breach of confidentiality by a party during the procedure will be considered a lack of good faith and may lead the NCP to terminate its good offices and close the case (10.5);
- during good offices, the work plan elaborated by the NCP once the offer of mediation has been accepted will include confidentiality arrangements (Section 6.9);
- the final statement takes into account the need to protect sensitive or confidential information (Section 7.1). When reaching an agreement, parties must decide whether or not it can be made publicly available (Section 10.4).

¹²⁶ As noted above, the NCP webpage alerts the interested parties on the impact of the pandemic on the specific instance timeline.

¹²⁷ Article 11, Law 12 527/2011.

Despite the detailed framework outlined above, the need to balance confidentiality and transparency remains. Some stakeholders indicated that they thought the NCP prioritised confidentiality over transparency. They asked for clearer rules on confidentiality and more publicly available information on specific instances, such as the publication of initial assessments. With regard to confidentiality provisions applicable to parties, CSO representatives raised concerns on the ‘duty of confidentiality’ under the RoP.¹²⁸ According to the NCP, and at the time of the virtual visit, it never had to face a breach of its confidentiality policy. However, some stakeholders remain concerned about the reference to legal proceedings in Section 10.10.

Confidentiality provisions also have not been fully consistently applied. For example, in one case, both parties were not given access to the same information in one case.¹²⁹ The NCP should consider giving an overview of the substance of exchanges and documentation to each of the parties, taking into account the need to protect confidential information. Further aligning the NCP’s practice with para. 22 of the Commentary to the Procedural Guidance would strengthen the perception of impartiality and equitability.

Civil society stakeholders have finally shared the concern that confidentiality provisions may limit the possibility to campaign about issues raised in a case. During the initial assessment phase, parties cannot publicise information on the specific instance. The NCP notes that in a recent specific instance involving public campaigning by the submitter prior to its submission, the NCP clarified the good faith requirement and the submitter ceased campaigning before engaging in good offices.¹³⁰

Impartiality in the handling of specific instances

The RoP do not address impartiality and perceptions of conflict of interest that NCP members may face in specific cases. The NCP is confident about its performance in terms of impartiality and perception of impartiality. However, stakeholders have expressed that they would have more confidence in the NCP if it were more transparent on the appointment and role of the rapporteur, and provided stronger guarantees against conflicts of interests that could arise as a result of the NCP’s location and conflict of interests rules applicable on NCP bodies (see Chapter on Institutional Arrangements above).

Parallel proceedings

The RoP require parties to inform the NCP about parallel proceedings during the specific instance process. Besides information in the submission (Section 4.12.IX), parties must inform the NCP about any development they become aware of in respect of such parallel procedures (Section 4.13). If applicable, parties should also specify if the same facts, requests and parties are involved in ongoing judicial procedures. The RoP provide parties with the option of communicating a possible mediation to the judiciary with possible suspension of the judicial process (Section 4.17).

In practice, it has happened that the NCP has taken parallel proceedings into consideration when deciding whether to accept a case or conclude it, albeit under a previous set of RoP. For example, one specific instance¹³¹ was concluded because of corporate changes and ongoing judicial proceedings on the same claim. Companies have also refused to engage in good offices because of ongoing parallel proceedings.¹³² The NCP will also conclude accepted specific instances in case of final judgment on the same facts

¹²⁸ See also [OECD Watch : NCP Brazil](#).

¹²⁹ 01/2020.

¹³⁰ 04/2020.

¹³¹ 01/2015.

¹³² 01/2020, 02/2020.

and claim (Section 4.17.2).¹³³ Since 2011, two accepted cases did not move to good offices as a result of final judicial decisions issued in the meantime.¹³⁴

Parallel proceedings have impacted the handling of specific instances in practice. Although parallel proceedings do not prevent the NCP from examining a case,¹³⁵ they may be taken into consideration when deciding whether to accept a case, offer good offices or conclude the case. Indicatively, parallel proceedings impacted a significant percentage of accepted specific instances since 2011.¹³⁶

Cooperation with other NCPs

Art. 2 V. of the Decree indicates that one of the tasks of the NCP is to cooperate with NCPs from other countries in relation to issues covered by the Guidelines. Once a specific instance has been deemed admissible, the NCP decides whether the specific instance should be accepted, rejected or transferred to another NCP under Section 5. The RoP reflect para. 23 of the Commentary to the Procedural Guidance on coordination among NCPs in specific instances. In case of cooperation or transfer of a case to another lead NCP, the NCP will inform the parties (Section 5.3.1). To date the NCP has cooperated in at least 16 cases with other NCPs (see Table 5.2). The NCP has acted as supporting NCP in four cases. The NCP is currently coordinating with other NCPs in five out of six ongoing cases.

Seven NCPs provided feedback on their cooperation with the Brazilian NCP. The NCPs had cooperated with the NCP in the context of specific instances as lead or supporting NCPs and in the context of an NCP peer review. Overall, NCPs provided very positive feedback. They noted that the NCP contributes to exchanges proactively and is open to sharing its broad experience on various NCP-related matters. NCPs further note that the Brazilian NCP responds swiftly and consistently to requests for information. One NCP welcomed the opportunity to participate as observer in the good offices phase of a specific instance led by the Brazilian NCP. Another NCP welcomed the Brazilian NCP's assistance in facilitating contact with a company and feedback on a draft document under the specific instance process.

The NCP participates regularly in the meetings of the NCP network and the LAC NCP network. The NCP also participated recently in bilateral NCP meetings in the LAC region.

Table 5.2. Specific instances where the Brazilian NCP has coordinated with other NCPs

Specific instance	Lead NCP	Supporting NCPs
Douglas Linares Flinto & ENI SpA (ongoing)	Brazil	Italy
Conectas and ADERE-MG & Nestlé (ongoing)	Brazil	Switzerland
Conectas and ADERE-MG & McDonalds (ongoing)	Brazil	United States
Conectas and ADERE-MG & Dunkin' Donuts (ongoing)	Brazil	United States
Conectas and ADERE-MG & JDE (ongoing)	Brazil	Netherlands
NGO and German MNE (ongoing)	Germany	Brazil
Van Oord Marine Operations Services, and Forum Suape Environmental Association, Conectas Human Rights, Fishermen colony of the city of Cabo de Santo Agostinho (2020)	Brazil	Netherlands

¹³³ See also [OECD Watch : NCP Brazil](#).

¹³⁴ 03/2014, 06/2020.

¹³⁵ See notably specific instance 01/2021.

¹³⁶ Five out of 16 accepted specific instances: 03/2012, 01/2013, 03/2020, 01/2020, 02/2020.

Edgeworth & Vakifbank (2020)	Turkey	Brazil
Postalis, Syndicate and FINDECT & Multinational company (2020)	Brazil	United States
Alleged wrongful dismissal of employee in Brazil (2018)	Italy	Brazil
ENI S.p.A. and Douglas Flinto (not specified, received in August 2018)	Brazil	Italy
C&A Moda Ltda and individual (2016)	Brazil	Germany
Paulinia and an individual concerning activities in Brazil, Chile, Venezuela (2015)	Chile	Brazil
Unilever and the trade union Unified Workers' Central (CUT) (2015)	Brazil	Netherlands
Alleged violation of employee rights in Brazil (2013)	Brazil	Germany
Profit sharing plan negotiation in Brazil (2013)	Brazil	Netherlands

Source: OECD NCP Database (2022)

Request for clarification

To date, the NCP has not submitted requests clarification from the Investment Committee or the Working Party on Responsible Business Conduct.

	Findings	Recommendations
3.1	The NCP has detailed and comprehensive Rules of Procedure. Some aspects are however very complex and there are some misalignments with the Procedural Guidance, notably on the admissibility criteria and confidentiality provisions. Their implementation in cases has sometimes resulted in practical difficulties and inconsistencies flagged by stakeholders and parties to specific instances. The NCP has noted its plans to review its Rules of Procedure.	When undertaking its review of the Rules of Procedure, the NCP should ensure that they are fully in line with the Procedural Guidance and could consider notably the following: <ul style="list-style-type: none"> • less formal approach to the initial assessment phase; • lower admissibility criteria and threshold for acceptance of specific instances; • early notification of the concerned company; • consultation with the parties on published statements; • provision of the non-confidential version of information provided by one party to the other; • publication of statements in non-accepted specific instances; • clear definition of the Working Group, rapporteur, and NCP Secretariat roles; • reaching out proactively to the parties in the different stages of the process; and • following up consistently on recommendations and agreements.
3.2	Cases handled by the NCP have regularly exceeded indicative timelines, notably as a result of a high case load, complexity of issues, but also of difficulties communicating with parties. Stakeholders have highlighted the need to communicate proactively about timelines to ensure predictability of the process and strengthen parties' trust.	In order to further build trust among potential submitters and increase the predictability of the specific instance process, the NCP should strive to meet indicative timelines when possible and proactively communicate with parties when timelines cannot be met.

6. Annex Documents

- A. List of organisations submitting responses to the NCP peer review questionnaire
- B. List of organisations that participated in the NCP peer review
- C. Promotional events
- D. Overview of specific instances handled by the NCP as the leading NCP

Annex A. List of organisations submitting responses to the NCP peer review questionnaire

Table A.1. Questionnaire submitters for the Brazilian NCP peer review by stakeholder group

Government
Institute for Applied Economic Research (Instituto de Pesquisa Econômica Aplicada) (IPEA)
Ministry of Infrastructure
National Treasury Attorney General's Office (Procuradoria-Geral da Fazenda Nacional) (PGFN) – Ministry of Economy
Permanent Delegation of Brazil to the OECD
Trade in Services Division - Ministry of Foreign Affairs
CSOs and Academia
Sao Paulo School of Business Administration (Escola de Administração de Empresas de São Paulo) (EAESP)
Inspere Institute of Education and Research (INSPER)
OECD Watch
Oxfam
Proteste
Business
Brazilian Association of Public Companies (Associação Brasileira das Companhias Abertas) (ABRASCA)
Brasil Foods (BRF SA)
Trade Unions
Central Workers' Union Confederation (Central Única dos Trabalhadores) (CUT)
Trade Union Advisory Committee (TUAC)
NCPs
Canada
Chile
France
Germany
Italy
Sweden
Türkiye

Annex B. List of organisations that participated in the NCP peer review virtual visit

Table B.1. Participants of the Brazilian NCP peer review by stakeholder group

Organisation	Sector
Special Secretariat of Foreign Trade and International Affairs, Ministry of Economy	NCP Secretariat, Coordinator and hierarchy
Office of the Comptroller General (CGU)	Government, NCP Working Group
Ministry of Labour and Social Security (MTP)	Government, NCP Working Group
Ministry of Mines and Energy (MME)	Government, NCP Working Group
Central Bank of Brazil (BCB)	Government, NCP Working Group
Ministry of Foreign Affairs (MRE)	Government, NCP Working Group, CONINV
Ministry of Justice and Public Security (MJSP/CADE)	Government, NCP Working Group
Ministry of Environment (MMA)	Government, NCP Working Group
Special Secretary for Productivity (MoE/Sepec)	Government, NCP Working Group
Ministry of Women, Family and Human Rights (MMFDH)	Government, NCP Working Group
Attorney General's Office of the National Treasury (MoE/PGFN)	Government, NCP Working Group
Trade and Investment Promotion Agency (Apex-Brasil)	Government, CONINV
Ministry of Agriculture, Livestock and Food Supply (Mapa)	Government, CONINV
Chief of Staff of the Presidency of the Republic (Casa Civil)	Government, CONINV
Ministry of Infrastructure (Minfra)	Government, CONINV
Special Secretariat of the Partnership and Investment Program (SPPI)	Government, CONINV
Ministry of Defense	Government, CONINV
Federal Revenue of Brazil (RFB)	Government, CONINV
Brazilian Ministerial Board of Foreign Trade and Investment (CAMEX)	Government
Secretariat of Coordination and Governance of State-owned enterprises (MoE)	Government
Securities and Exchange Commission of Brazil (CVM)	Government
INSPER	Academia
FGVethics	Academia
Business, Human Rights and Public Policy - Clinic University Center of Brasília (UniCEUB)	Academia
Business and Human Rights Center, Fundação Getúlio Vargas (FGV/CeDHE)	Academia
Conectas Human Rights	CSO
Proteste	CSO
Repórter Brasil	CSO
Ethos Institute	CSO
National Confederation of Industry (CNI)	Business organisation
Brazilian Agriculture and Livestock Confederation (CNA)	Business organisation
Brasil, Bolsa, Balcão (B3 S.A.)	Business organisation
Laboratory of Financial Innovation (LAB)	Business organisation
Vale S.A.	Business
Illycaffè S.p.A	Business
Unified Central of Workers (CUT - Central Única dos Trabalhadores)	Trade union
Union Force (FS - Força Sindical)	Trade union
Central Workers' Union of Brazil (CTB - Central de Trabalhadores e Trabalhadoras do Brasil)	Trade union

General Union of Workers (UGT - União Geral dos Trabalhadores)	Trade union
Legal representatives of individual specific instance submitter	Individuals
OECD Watch	Institutional stakeholder
Trade Union Advisory Committee to the OECD (TUAC)	Institutional stakeholder

Annex C. Promotional events

Table C.1. Promotional activities in 2021 organised by the NCP

Title	Date	Location	Size of Audience	Organised or co-organised	Targeted audience
MERCOSUR-OECD Investment Seminar	18/11/2021	Online	>100	Co-organised	Multistakeholder
EUROCONSUMERS FORUM 2021 - OECD Session: Responsible Business Conduct and the OECD Guidelines: Trends and Opportunities	02/2012/2021	Online	>100	Co-organised	Multistakeholder

Source: National Contact Point Reporting Questionnaire (2021)

Table C.2. Events in 2021 participated in by the NCP

Title	Date	Location	Size of Audience	Targeted Audience
Presentation on meeting of the Comissão Nacional de Erradicação do Trabalho Escravo (CONATRAE)	06/12/2021	Online	Not available	Government representatives
Webinar: Lançamento da Edição Especial do Boletim de Economia e Política Internacional sobre Conduta Empresarial Responsável e Acordos de Investimento	04/08/2021	Online	> 10 and < 50	Government representatives
Presentation on NCP and National Plan on RBC (Pacer) at the Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	25/02/2021	Online	> 10 and < 50	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	22/07/2021	Online	> 10 and < 50	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	05/08/2021	Online	Not available	Multistakeholder

NCP side session 'Conversations with the National Contact Points for RBC', Global Forum on RBC	16/06/2021	Online	Not available	General public
Forum on due diligence in the garment and footwear sector - ROUNDTABLE FOR POLICY MAKERS	02/02/2021	Online	> 10 and < 50	General public
First workshop for LAC NCPs on promotional plans	03/05/2021	Online	> 10 and < 50	NCPs
RBA Latin America Conference: Latin American Government efforts on Responsible Business Conduct panel	02/09/2021	Online	Not available	Government representatives
2º Fórum Nacional Responsabilize-se: Reconhecendo os papéis, os arranjos institucionais e os marcos de governança sobre Empresas e Direitos Humanos no Brasil	19/04/2021	Online	Not available	General public
Meeting with Secretaria Nacional do Consumidor (Senacon) on the RBC Action Plan (Pacer)	14/01/2021	Online	< 10	Government representatives
Meeting with Sucex - export credits	30/03/2021	Online	< 10	Government representatives
Meeting with Ministério da Infraestrutura (Minfra) on infrastructure and RBC	30/03/2021	Online	< 10	Government representatives
Meeting with Secretaria de Gestão do Ministério do Planejamento (SEGES) on public procurement and RBC	30/03/2021	Online	< 10	Government representatives
Meeting with Secretaria de Políticas Econômicas (SPE) on economic policies and RBC	24/05/2021	Online	< 10	Government representatives
Interview for Master's thesis	02/06/2021	Online	< 10	Academia
Meeting with Casa Civil - accession process and NCP	24/08/2021	Online	< 10	Government representatives
Meeting with Apex-Brasil on RBC policy review	26/08/2021	Online	< 10	Government representatives
Meeting with Apex-Brasil on RBC survey under RBCLAC	08/01/2021	Online	> 10 and < 50	Multistakeholder
Meeting with Secretaria de Comércio Exterior do Ministério da Economia - Secex	29/03/2021	Online	< 10	Government representatives

BRAZIL - U.S. CEO FORUM: JOINT PREPARATION MEETING	07/10/2021	Online	> 50 and < 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	28/01/2021	Online	> 50 and < 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup 25/02/2021 Online Meeting > 50 and < 100 Multistakeholder Lab sustainable development Meeting of the Laboratory of Financial Innovation	25/02/2021	Online	> 50 and < 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	15/04/2021	Online	> 50 and < 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	20/05/2021	Online	> 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	25/05/2021	Online	> 100	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	24/06/2021	Online	Not available	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	13/10/2021	Online	> 10 and < 50	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	29/11/2021	Online	Not available	Multistakeholder
Meeting of the Laboratory of Financial Innovation (Lab), Integrated Risk Management Subgroup	01/12/2021	Online	> 10 and < 50	Multistakeholder
EACDH. Empresas e direitos humanos. 7 ^a sessão do OEIGWG. Terceira minuta de LBI. Negociações. Reunião de coordenação	22/10/2022	Online	Not available	Government representatives

RBC & Public Procurement: Virtual training on Essentials of OECD Due Diligence	22/03/2021	Online	Not available	General public
Regulatory Developments concerning Due Diligence for Responsible Business Conduct - GFRBC: Policy Makers' Roundtable (PMRT)	14/05/2021	Online	Not available	General public
G20 Infrastructure Investors Dialogue, under the Italian G20 Presidency in collaboration with the OECD and D20 Long-Term Investor Club	03/06/2021	Online	Not available	Multistakeholder
Regulatory Developments concerning Due Diligence for Responsible Business Conduct - GFRBC: Policy Makers' Roundtable (PMRT)	14/06/2021	Online	Not available	General public
Global Forum on Responsible Business Conduct	15/06/2021	Online	Not available	General public
Webinar on Stock-taking report on the Guidelines for Multinational Enterprises and Draft Recommendation on the Role of Government	24/06/2021	Online	Not available	General public
Seminar "Labour issues in RBC: the guidance provided by International Labour Standards and the ILO", RBCLAC Project	01/02/2021	Online	Not available	Multistakeholder
Meeting with Confederação Nacional da Indústria (CNI) on the OECD Guidelines	23/04/2021	Online	> 10 and < 50	Business representatives
Meeting of the UN Global Compact, Human Rights Platform	11/02/2021	Online	> 100	General public
Meeting with NCP Argentina, peer learning	09/02/2021	Online	Not available	NCPs
Meeting with NCP Chile, peer learning	12/05/2021	Online	< 10	NCPs
Meeting with Proteste - partnership	30/06/2021	Online	< 10	NGO
Meeting with CNI on Pacer	13/07/2021	Online	< 10	Business representatives
Meeting with CAN on Pacer	27/07/2021	Online	Not available	Government representatives
Meeting with Conselho Nacional de Direitos	30/07/2021	Online	Not available	Government representatives

Humanos (CNDH) on specific instances				
Meeting with SEBRAE on Pacer	01/09/2021	Online	Not available	Government representatives
Meeting with MMA on RBC policy review	27/09/2021	Online	< 10	Government representatives
Meeting with ABDE on Pacer and NCP	28/09/2021	Online	< 10	Multistakeholder
Second workshop for LAC NCPs on rules of procedure	06/07/2021	Online	Not available	Government representatives
Meeting with MMFDH	12/11/2021	Online	Not available	Government representatives
III Encuentro Comunidad de Práctica Intergubernamental sobre Empresas y DDHH	13/04/2021	Online	Not available	General public
Workshop sobre interações entre Direitos Humanos e Compliance e Devida Diligência da Rede Brasil do Pacto Global e o Global Business Initiative on Human Rights (GBI)	30/04/2021	Online	> 100	General public
IV Encuentro Comunidad de Práctica Intergubernamental sobre Empresas y DDHH	12/05/2021	Online	Not available	NCPs
UK-Brazil Trade Steering Group - Third Meeting	07/06/2021	Online	Not available	General public
V Encuentro Comunidad de Práctica Intergubernamental sobre Empresas y DDHH	09/06/2021	Online	Not available	General public

Source: National Contact Point Reporting Questionnaire (2021)

Table C.3. Promotional activities in 2020 organised by the NCP

Title	Date	Location	Size of Audience	Organised or co-organised	Targeted Audience
Session co-organized with the OECD during the event “3 ^a Cátedra Barão do Rio Branco	24/09/2020	Online	> 100	Co-organised	General public

Source: National Contact Point Reporting Questionnaire (2020)

Table A C.4. Events in 2020 participated in by the NCP

Title	Date	Location	Size of Audience	Targeted Audience
ABC de mecanismos de reparación de Instituciones Financieras Internacionales (IFIs) y Puntos Nacionales de Contacto (PNC)	19/05/2020	Online	> 100	General public
Sujeitos e Direitos no Pós-Covid-19	27/05/2020	Online	10-50	General public
Thesis defense on NCPs and modern slavery	25/06/2020	Online	< 10	Academia
Avaliação de Políticas Públicas Pós-Pandemia	26/08/2020	Online	10-50	General public
Virtual meeting on LAC NHRIs and LAC NCPs: Exploring potential for cooperation, Regional Forum on Business and Human Rights	10/09/2020	Online	10-50	National Human Rights Institutions
Todos los caminos hacia la reparación: espacio de discusión sobre acceso a reparación con PNC, Regional Forum on Business and Human Rights	11/09/2020	Online	> 100	General public
Mecanismos de compliance internacional no combate à corrupção de multinacionais, dentro das legislações domésticas que foram estruturadas pós-convenção da OCDE	14/10/2020	Online	10-50	Academia
Regional trends and dialogue: Latin America and the Caribbean, 9th UN Forum on Business and Human Rights	18/11/2020	Online	> 100	General public

Source: National Contact Point Reporting Questionnaire (2020)

Annex D. Overview of specific instances handled by the Brazilian NCP as the leading NCP

Enterprise/ Specific instance number	Submitter	Host Country	Chapter (s) of the Guidelines	Date of Submission	Date of Acceptance	Date of Conclusion	Outcome	Description	Follow-up	Review
Empresa General Motors No 01/2003	One trade union, Sindicato dos Metalúrgicos da Grande Porto Alegre (STIMEPA)	Brazil	Employment and Industrial relations (V)	4/09/03	N/A	25/03/08	Concluded Without agreement Without recommendations with statement	The NCP concluded the case due to the lack of evidence over the years and complaints on the same facts submitted to the Brazilian courts and other fora, including the ILO.	No	N/A
Usina Canabrava (headquartered in Brazil) s/n/2004	CSO Movimento dos Atingidos por Barragens (MAB)	Brazil	Unspecified	03/05/04	N/A	2012	Not accepted	The NCP found that the CSO had not officially requested a review of the company's activities, and the company was not a multinational. Additional information requested by the CSO in 2012 was not provided.	No	N/A
Unnamed (headquartered in USA) s/n/2006	CSO Associação Nacional de Consumidores e Vítimas das Empresas Montadoras e	Brazil	General Policies (II), Disclosure (III), Employment and Industrial relations (V), Combatting Bribery, Bribe	04/07/06	N/A	19/09/06	Not accepted	The NCP found that the submission did not have sufficiently delimited focus and supporting documents were missing. Moreover,	No	N/A

	Concessionárias Automotivas (Anvemca)		Solicitation and Extortion (VII), Consumer Interests (VIII)					judicial proceedings were ongoing.		
Shell Brasil (headquartered at the time in the Netherlands), Esso Brasileira de Petróleo (headquartered at the time in the USA) No 01/2006	CSO Green Alternative Collective (CAVE) and trade union the Mineral and Oil Derivatives Workers (SIPETROL)	Brazil	General Policies (II), Employment and Industrial relations (V)	08/05/06	07/06/2006	10/09/2013	Concluded with statement Without agreement Without recommendations	The NCP terminated the dialogue noting ongoing judicial proceedings regarding the issues covered by the complaint.	No	N/A
Pertech of Brazil Ltda. (headquartered in the US) No 03/2007	Trade Union Unified Workers' Central (CUT)	Brazil	General Policies (II), Human Rights (IV)	12/12/05	2007	23/04/13	Concluded with statement Without agreement Without recommendations	The NCP considered it inappropriate to proceed in relation to a claim judged through final decision of a Brazilian court.	No	N/A
C&A Modas Ltda (headquartered in the Netherlands) No 04/2007	Trade Union Unified Workers' Central (CUT)	Brazil	Concepts and Principles (I), General Policies (II), Employment and Industrial relations (V)	06/03/07	25/03/2008	17/05/13	Concluded with statement Agreement outside NCP process	The NCP decided to terminate the specific instance process based on request of the Submitter based on commitment by the company to open negotiation on agreement at national level.	No	N/A
Unibanco (headquartered in Paraguay) No 05/2007	Trade Unions National Confederation of Financial Sector Workers (CONTRAF), Unified Workers' Central (CUT)	Brazil	General Policies (II), Employment and Industrial relations (V)	07/03/07	25/03/2008	14/09/12	Concluded with statement Agreement outside NCP process	The NCP decided to close the case following notification by one submitter that the case was resolved through direct negotiations between the parties.	No	N/A
ABN AMRO (headquartered in the Netherlands)	Trade Unions National Confederation of	Brazil	Employment and Industrial relations (V)	19/04/07	13/03/2008	14/09/12	Concluded with statement Without agreement	The NCP decided to close the case following notification by one	No	N/A

No 07/2007	Financial Sector Workers (CONTRAF), Unified Workers' Central (CUT)						Without recommendations	submitter on the takeover of the company without agreement reached on the complaint.		
Itau-Unibanco Bank (headquartered in Brazil) No 01/2010	Trade Unions Bank Workers Union of Sao Paulo, Osasco and Region (Bank Workers Union), Federation of Workers in Credit Companies of the State of Sao Paulo (FETEC/SP-CUT), Nation Confederation of Workers in the Financial Field (CONTRAF/CUT) and Central Workers Union (CUT)	Brazil	Employment and Industrial relations (V)	22/09/09	22/06/10	30/03/15	Concluded with statement Without agreement With recommendations	The NCP decided to close the case and make recommendations to the parties to proceed with independent dialogue and the company to go beyond legal obligations and rights.	No	N/A
Santander Bank Brasil (headquartered in Spain) No 02/2010	Trade Unions Bank Workers Union of São Paulo, Osasco and Region (Bank Workers Union), Federation of Workers in Credit Companies of the State of São Paulo (FETEC/SP-CUT) and Central Workers Union (CUT)	Brazil	Concepts and Principles (I), Employment and Industrial relations (V)	22/09/09	22/06/10	30/03/15	Concluded with statement Without agreement With recommendations	The NCP decided to close the case and make recommendations to the parties to proceed with independent dialogue and the company to go beyond legal obligations and rights.	No	N/A
BASF S.A. CUT (headquartered in Germany) No 03/2010	Trade Union Unified Workers' Central (CUT), on behalf of trade unions members of the Workers Network at BASF South America	Brazil	Employment and Industrial relations (V)	19/04/10	22/06/10	30 /03/12	Concluded with statement Agreement outside NCP process	The NCP decided to close the case following request of the submitters to suspend the process and commitment of the company to improve dialogue with the trade	No	N/A

								union, including regarding suspension of representatives, dismissal and workers' integration).		
Nestlé Brasil Ltda (headquartered in Switzerland) s/n/2010	Individual, Mr. Antonio Carlos Oliveira, on behalf of the group of Purina former distributors	Brazil	General Policies (II)	15/07/10	N/A	27/04/12	Not accepted	The NCP did not accept the case based on Article 3 of the NCP Resolution 01/2007. Under this provision "complaints whose knowledge occurred more than 12 months after the date of receipt by the NCP will not be accepted".	No	N/A
Itaú Unibanco S.A. (headquartered in Brazil) No 01/2012	Trade Union Bank Workers Union of São Paulo, Osasco and Region	Brazil	Employment and Industrial relations (V)	06/12/11	09/11/2012	23/04/13	Concluded with statement Without agreement With recommendations	The NCP concluded the case due to the lack of agreement between the parties	No	N/A
Unilever Brasil Alimentos Ltda (headquartered in the Netherlands) No 02/2012	Trade Unions Unified Workers' Central (CUT), Syndicate of Workers from Food and Related Industries (STIAAMM) of Mogi Mirim/SP	Brazil	Employment and Industrial relations (V)	25/11/10	14/09/12	10/08/15	Concluded with statement Without agreement With recommendations	The NCP concluded the case in light of the context and relaunch of dialogue among stakeholders.	No	N/A
Atento S/A (headquartered in Spain) No 03/2012	Trade Union Bank Workers Union of São Paulo, Osasco and Region	Brazil	Concepts and Principles (I)	28/02/12	14/09/12	28/01/15	Concluded – did not move to good offices Agreement outside NCP process with statement	Following the admissibility control, the rapporteur recommended requesting additional information. The information was not provided. The NCP closed the case following request by the submitter a solution was	No	N/A

								reached outside the NCP process.		
Banco Santander S/A (headquartered in Spain) No 04/2012	Trade Union Bank Workers Union of São Paulo, Osasco and Region	Brazil	General Policies (II), Employment and Industrial relations (V)	04/08/10	12/06/12	04/10/13	Not accepted	The NCP did not accept the case because more than 12 months passed between occurrence and notification of the NCP (art. 3, NCP Resolution 01/2012).	No	N/A
Unnamed (headquartered in Italy) s/n/2013 – 01/07/13	Individual, Douglas Linares Flinto	Brazil	Unspecified	01/07/13	N/A	09/09/2013	Not accepted	See No 04/2020 below.	No	N/A
Unnamed (headquartered in Germany) s/n/2013 – 19/09/13	Unnamed individual	Brazil	General Policies (II), Human Rights (IV)	19/09/13	N/A	02/12/13	Not accepted	The case was transferred by the Germany NCP. The NCP did not accept the case because of the 12-month limit (Art. 3 NCP Resolution 01/2012) and the lack of expressed interest by the submitter for the case to be examined by the Brazilian NCP.	No	N/A
Banco do Brasil S.A. (headquartered in Brazil) No 01/2013	Trade Union Bank Workers Union of São Paulo, Osasco and Region	Brazil	Employment and Industrial relations (V), Environment (VI)	12/03/2013	08/04/2013	28/01/15	Concluded – did not move to good offices Agreement outside NCP process with statement	The submitter requested to close the case under two separate letters on Chapters V and VI, given ongoing dialogue outside the specific instance process and solution outside the NCP process respectively.	No	N/A
Kinross Brasil Mineração, part of the Kinross Gold Corporation group	Other interested parties: Paracatu neighboring associations	Brazil	General Policies (II), Human Rights (IV), Environment (VI)	18/06/13	08/2013	21/12/16	Concluded with statement, with agreement, and with recommendations.	The NCP concluded at the final mediation meeting that an agreed solution was identified.	No	N/A

(headquartered in Canada) No 01/2014							Plans for follow-up			
C&A Modas Ltda – “C&A Brasil”, Subsidiary of the Cofra Holding Group – “C&A Global” (headquartered in Germany) No 02/2014	Individual German Parliamentarian	Brazil	General Policies (II), Human Rights (IV)	04/12/13	17/10/2013	08/12/2016	Concluded with statement Without agreement With recommendation	Following the admissibility control, the rapporteur recommended requesting additional information. The rapporteur recommended concluding the case based on the information provided by the company on modifications of the code of conduct, lack of corporate response on the submitter’s recommendations, and distance which did not allow mediation.	No	N/A
Mappel Packaging industry S/A (Brazilian subsidiary of company headquartered in France) No 03/2014	Trade Unions Workers’ Union and by the Workers of the Chemical, petrochemical, pharmaceutical, paints and varnishes, plastics, synthetic resins and explosives Industries of ABCD, Maúa, Ribeirão Pires e Rio Grande da Serra	Brazil	Concepts and Principles (I), General Policies (II), Employment and Industrial relations (V)	16/10/13	26/11/2013	07/04/15	Concluded with statement Without agreement Without recommendation did not move to good offices	Following the admissibility control, and based on a final court decision shared by the company concerning a different claim which was closely related with the object of the complaint, the NCP terminated proceedings.	No	N/A
Unnamed security market company (headquartered in Brazil) s/n/2015	CSO Americans for Democracy in Bahrain	Bahrain	General Policies (II), Human Rights (IV)	22/09/15	N/A	30/11/2016	Not accepted	The NCP found no link between the company’s activities and Chapter IV.	No	N/A

Fidelity National BPO Brazil (headquartered in the US) No 01/2015	Trade Union Bank Workers Union of São Paulo, Osasco and Region	Brazil	General Policies (II), Employment and Industrial relations (V)	02/08/10	27/02/15	23/07/15	Concluded – with statement Without agreement Without recommendation did not move to good offices	Following the admissibility control, the NCP terminated proceedings based on information by the parent company that (i) the subsidiary was closed and remained active only to answer possible employment issues and (ii) court proceedings were ongoing on the same claim.	No	N/A
Van Oord Marine Operation Services Ltda, (headquartered in the Netherlands) No 02/2015	CSOs Fórum Suape Social-Environmental Space Association, Human Rights Conectas, Fishermen Colony of the Cabo de Santo Agostinho County	Brazil	General Policies (II), Disclosure (III), Human Rights (IV), Environment (VI)	08/06/15	18/08/15	05/06/20	Concluded with statement and recommendations Agreement outside NCP process.	The NCP concluded the case due to lack of agreement between the parties following mediation within and outside the specific instance process.	Yes	Ongoing
Unnamed company (headquartered in the US) No 01/2017	Trade Unions Postalís Institute of Supplementary Pension (Postalís), Union of Workers in the Brazilian Post and Telegraph Company in the State of Tocantins and Interstate Federation of Labour unions and Postal Workers (FINDECT)	Brazil	Unclear	09/08/17	N/A	13/08/20	Not accepted	Despite several contacts with the submitters, the NCP found gaps of information and decided to close the case.	No	N/A
Unnamed company (headquartered in Italy) s/n/2018	Individual, Douglas Linares Flinto	Brazil	Not specified	08/08/2018		10/01/2019	Not accepted	The NCP concluded that the issues raised were not adequately substantiated and did	No	N/A

								not accept the case for further consideration.		
Vale SA, BHP (headquartered in Brazil and Australia respectively) No 01/2018	Trade Unions Building and Wood Workers' International (BWI); IndustriALL Global Union; Labour Union of Heavy Construction Industries of the State of Minas Gerais (SITICOP); National Confederation of the Chemical Sector (CNQ/CUT)	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	23/03/2018	18/04/18	01/11/19	Concluded with statement and recommendations No agreement) The NCP concluded the case because the company requested termination of the proceedings.	No	N/A
Dunkin' Donuts (headquartered in Brazil, parent company headquartered in the US) No 02/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG), Conectas Human Rights	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	06/03/20	-	Ongoing			
Illy Café (headquartered in Italy) No 03/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG), Conectas Human Rights	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	12/08/19	13/08/20	Concluded – did not move to good offices Without agreement With recommendations	The NCP decided not to pursue allegations regarding Illy based on the lack of direct link between business activities of the company and allegations.	Yes	Ongoing
Jacobs Douwe Egberts (headquartered in the Netherlands) No 04/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG),	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	06/03/20	N/A	Ongoing		N/A	N/A

	Conectas Human Rights									
Mc Donald's (headquartered in the US) No 05/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG), Conectas Human Rights	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	06/03/20	N/A	Ongoing		N/A	N/A
Nestlé (headquartered in Switzerland) No 06/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG), Conectas Human Rights	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	06/03/20	N/A	Ongoing		N/A	N/A
Starbucks (headquartered in the US) No 07/2018	CSOs Association of Rural Employees of the State of Minas Gerais (ADERE MG), Conectas Human Rights	Brazil	General Policies (II), Human Rights (IV), Employment and Industrial relations (V)	21/08/18	12/09/18	13/08/20	Concluded – did not move to good offices With recommendations In follow-up	The NCP decided not to pursue allegations regarding Starbucks based on the lack of direct link between business activities of the company and allegations.	Yes	Ongoing
Vale SA (headquartered in Brazil) No 01/2020	Individuals Carlos Cleber Guimarães Júnior, Carla de Laci França Guimarães	Brazil	General Policies (II), Disclosure (III), Human Rights (IV), Environment (VI)	23/01/20	13/04/20	28/10/21	Concluded with statement With recommendations	The NCP concluded the case following refusal of the company to enter good offices on Human Rights (IV) issues and overall concerns on public perception of the specific instance's outcome in favor of the submitters in the context of broader ongoing reparation process in the region affected by the damn. The parties also reached a settlement.	Ongoing	N/A

Vale SA (headquartered in Brazil) No 02/2020	22 Individuals	Brazil	General Policies (II), Disclosure (III), Human Rights (IV), Environment (VI)	14/02/20	13/04/20	28/10/21	Concluded with statement With recommendations	Ibid.	Ongoing	N/A
Vale SA (headquartered in Brazil) No 03/2020	Individual, CEO of Vila Solaris Hospedagens e Eventos	Brazil	General Policies (II), Disclosure (III), Human Rights (IV), Environment (VI)	17/02/20	13/04/20	26/05/2021	Concluded – did not move to good offices with statement Agreement outside NCP process	Following the admissibility control, the NCP did not offer good offices based on a request by the submitters to suspend the process in view of ongoing dialogue close to agreement with the company in a different forum	No	N/A
ENI SPA (headquartered in Italy) No 04/2020	Individual, Douglas Linares Flinto	Brazil	Concepts and Principles (I), General Policies (II), Disclosure (III), Human Rights (IV), Combating Bribery, Bribe Solicitation and Extortion (VII)	16/7/20	16/10/20	N/A	Ongoing		No	N/A
Petrobras SA (headquartered in Brazil) No 05/2020	Individual, Douglas Linares Flinto	Brazil	Concepts and Principles (I), General Policies (II), Disclosure (III), Human Rights (IV), Combating Bribery, Bribe Solicitation and Extortion (VII)	16/07/20	16/10/20	25/03/21	Concluded with statement No recommendations Agreement reached outside of the NCP process	The NCP concluded the case and decided that documents provided by the company addressed the submitter's requests.	No	N/A
Bracell Bahia Forestry Ltda (Royal Golden Eagle, headquartered in Singapore) No 06/2020	Individual, Izabel Lopes Soares da Silva	Brazil	Disclosure (III) Human Rights (IV), Environment (VI)	31/08/20	26/01/21	14/12/21	Concluded – did not move to good offices with statement No agreement No recommendations	Following the admissibility control, the rapporteur recommended the closure of the specific instance based on (i) the expiration of the 60-month time limit; (ii) the issuance of a final	No	N/A

								judicial decision and (iii) the lack of link to Chapter VI of the Guidelines on the three claims respectively.		
Unnamed (headquartered in Germany) No 01/2021	CSO Society for Threatened Peoples – Gesellschaft für bedrohte Völker (GfbV)	Brazil	General Policies (II), Disclosure (III), Human Rights (IV), Environment (VI)	30/12/20	17/03/2021	02/09/2021	Concluded – did not move to good offices	Following the admissibility control, and before the rapporteur's recommendation under Sections 5.7.1, 5.10 RoP, the submitter withdrew the claims.	No	N/A
Unnamed (headquartered in Brazil) No 02/2021	Individual, Grécia Julia Leite Mageste	Brazil	General Policies (II), Human Rights (IV), Employment and Labour Relations (V), Environment (VI)	21/05/21	N/A	24/08/21	Not accepted	The NCP did not accept the case due to missing information (unspecified) under Sections 4.14 and 4.18.2 of the RoP.	No	N/A
Unnamed (headquartered in Italy) No 03/2021	Individual, Douglas Linares Flinto	Brazil	Concepts and Principles (I), Disclosure (III), Human Rights (IV), Combating Bribery, Bribe Solicitation and Extortion (VII)	27/05/21	N/A	24/08/2021	Not accepted	The NCP did not accept the case due to missing information (unspecified) under Sections 4.14 and 4.18.2 of the RoP.	No	N/A

National Contact Point Peer Reviews: Brazil

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) that functions in a visible, accessible, transparent and accountable manner.

This report contains a peer review of the Brazilian NCP, mapping its strengths and accomplishments and also identifying opportunities for improvement.

